Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

RALPH NADER, PETER MIGUEL CAMEJO, JEFFREY COHN, NICOLE ELENTRIO, KEVIN BARRY, MARSHALL LINTON, REBECCA STEWARD,

Petitioners,

v.

LINDA SERODY, RODERICK SWEETS, RONALD BERGMAN, RICHARD TRINCLISTI, TERRY TRINCLISTI, BERNIE COHEN-SCOTT, DONALD BROAN, JULIE O'CONNELL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Did the widely varying procedures used by the judges of the Pennsylvania Commonwealth Court and county election officials in reviewing objections to the nominating papers of Ralph Nader and Peter Miguel Camejo violate Petitioners' rights to due process and equal protection of laws under the Fourteenth Amendment to the United States Constitution, per *Bush v. Gore*, 531 U.S. 98 (2000)?

II. Did the Supreme Court of Pennsylvania's construction of the term "qualified elector" to mean a person who is duly registered to vote, for purposes of signing candidate nominating papers, violate Petitioners' rights to freedom of political expression and freedom of association under the First Amendment to the United States Constitution, per *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999)?

PARTIES TO THIS PROCEEDING

The parties seeking a review by certiorari are Ralph Nader and Peter Miguel Camejo (the "Candidates") who on August 2, 2004, filed nomination papers with the Secretary of the Commonwealth of Pennsylvania seeking to have their names printed on the November 2, 2004 general election ballot as independent political body candidates for the respective offices of President and Vice President of the United States. Joining the Candidates in this petition are Jeffrey Cohn, Nicole Elentrio, Kevin Barry, Marshall Linton and Rebecca Steward who are Pennsylvania qualified electors who signed the Candidates' nomination papers and sought to intervene in the proceedings before the Pennsylvania courts.

Respondents Linda S. Serody, Roderick Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald Broan and Julie O'Connell (the "Objectors") filed a petition seeking to set aside Candidates' nomination papers on August 9, 2004, and were Appellees below.

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PETITION FOR A WRIT OF CERTIORARI

Ralph Nader, Peter Miguel Camejo (Candidates") and their independent electors, the intervenors, Jeffrey Cohn, Nicole Elentrio, Kevin Barry, Marshall Linton, and Rebecca Steward respectfully petition this Court for a Writ of Certiorari to review a decision of the Pennsylvania Supreme Court.

OPINIONS BELOW

The October 19, 2004, Order of the Pennsylvania Supreme Court is unpublished, but appended hereto. Appendix ("App.") 1a. The October 13, 2004, decision of the Pennsylvania Commonwealth Court is unpublished, but appended hereto. App. 2a-15a. The September 29, 2004 Opinion of the Pennsylvania Supreme Court, including concurring opinions by Justices Cappy and Saylor, in support of its September 20, 2004 Order is unpublished but appended hereto. App. 16a-58a. The September 29, 2004 opinion of the Commonwealth Court in support of its September 27, 2004, order, is unpublished but appended hereto. App. 59a-63a. The September 27, 2004 order of the Commonwealth Court is unpublished, but appended hereto. App. 64a. The September 20, 2004, order of the Pennsylvania Supreme Court is unpublished, but appended hereto. App. 65a-66a. The August 30, 2004 opinion of the Commonwealth Court is published at 856 A.2d 908 and appended hereto. App. 75a-90a.

STATEMENT OF JURISDICTION

The Pennsylvania Supreme Court entered its judgment in this matter on October 19, 2004. This Court has jurisdiction over this writ of certiorari pursuant to 28 U.S.C. §1257. The decision below affirms the order of the Commonwealth Court directing the Pennsylvania Secretary of State not to certify the names of Ralph Nader and Peter Miguel Camejo as candidates for President and Vice-

President of the United States in the November 2, 2004 general election. App. 1a, 15a.

CONSTITUTIONAL PROVISIONS INVOLVED

The First and Fourteenth Amendments to the United States Constitution provide, in pertinent part, as follows:

> Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> Amendment XIV. Section 1. ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. I & XIV, §1.

STATEMENT OF THE CASE

This case strikes at the heart of the electoral process, namely the access of Presidential candidates to the ballot. In clear contravention of the First and Fourteenth Amendments, the Supreme Court of Pennsylvania has barred the Candidates from the Ballot as candidates for President and Vice-President of the United States. In so doing, the court *ignored* the widely varying procedures employed by different county courts for purposes of verifying signatures on the Candidates' nominating papers, despite this Court's landmark ruling in *Bush v. Gore*, 531 U.S. 98 (2000), that such inconsistent procedures violate the equal protection and

due process rights of candidates for the Presidency and Vice-Presidency. The court also overlooked the Pennsylvania Commonwealth Court's erroneous construction of the requirement that the signatories of nominating papers be "qualified electors," and permitted thousands of signatures to be struck because the signatories were not "registered voters," despite this Court's ruling in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), that such a restrictive interpretation violates the First Amendment rights of candidates and nominating paper signatories.

The Facts Giving Rise To This Case

On August 2, 2004, the Candidates filed, with the Secretary of the Commonwealth, their nomination papers seeking to have their names included on the Ballot as independent political body candidates for President and Vice President of the United States. The Candidates' nomination papers contained 51,273 signatures of persons who declared that they were "qualified electors of Pennsylvania." App. 4a. This total was nearly double the 25,697 signatures required by Section 951(b) of Election Code, 25 P.S. 2911(b).

On August 9, 2004, the Objectors filed a petition to set aside the Candidates' nomination papers, challenging between 34,000 and 35,000 of the filed signatures. *See e.g.*, App. 59a The Objectors asserted, in particular, that over 30,000 of the filed signatures were from persons who were not registered to vote at the addresses listed on the nomination papers as of the date of signing. Thus, according to the Objectors, the Candidates' nomination papers had to be set aside because they lacked the requisite number of signatures.

Proceedings In The Pennsylvania Commonwealth Court

By order dated August 30, 2004, the Commonwealth Court set aside the Candidates' nomination papers. App. 75a-90a. The primary basis for this order was the court's

determination that pursuant to Section 951(e) of the Election Code, 25 P.S. §2911, the Candidates were disqualified because of their nomination on the Michigan general election ballot as the Presidential and Vice Presidential candidates of the Michigan Reform Party. App. 83a. Additionally, the court rejected the Candidates' procedural objections to certain standards that were being used during the limited signature review conducted prior to the August 30, 2004 order. App. 84a-88a. Accordingly, the Commonwealth Court set aside the Candidates' nomination papers and directed the Pennsylvania Secretary of State not to print the Candidates' names on the Ballot. App. 88a.

By a *per curiam* order dated September 20, 2004, the Pennsylvania Supreme Court reversed the Commonwealth Court's August 30, 2004 order. App. 65a-66a. In its majority opinion filed on September 29, 2004, the Pennsylvania Supreme Court concluded that the lower court committed an error of law when it held that Election Code Section 951(b) prohibited the Candidates from appearing on the Ballot. App. 32a-38a. The majority of the Pennsylvania Supreme Court then addressed -- and rejected -- the Candidates' procedural objections as to the signature review process. App. 41a-47a. The court reversed the lower court's August 30, 2004 order, reinstated the Candidates on the Ballot, and remanded the matter to the Commonwealth Court for expedited hearings on the signatures challenged by the Objectors. App. 49a.

By order dated September 16, 2004 (which was later amended to September 20, 2004), the Commonwealth Court scheduled multiple hearings to be held in 10 locations throughout Pennsylvania between September 27, 2004 and September 30, 2004 on the Objectors' challenges. App. 67a-74a. This order dictated, among other things, that counsel for the parties work with county election officials in all 48 counties where objections were asserted, for the purpose of

reporting to the court whether the signatures were "defective" based on ten particular categories of defects, including several categories premised on voter registration. App. 69a-72a. The voter registration reviews in the 48 counties were ordered to take place daily, including weekends, from 8:30 a.m. until 10:00 p.m., and the absence of counsel for any party was not to prevent the review from occurring unless agreed to by all counsel. App. 69a-70a.

The September 16/20th order modified for Philadelphia and Allegheny counties the voter registration review process dictated for the other 46 counties. App. 73a. As to Philadelphia County where close to 70% of Objectors' total challenges were heard, the voter registration review was to be performed by Philadelphia's voter registration administrator or his staff. App. 73a. This modification was made because Philadelphia County is not part of the Statewide Uniform Registry of Electors ("SURE"). Accordingly, as to Philadelphia County, the voter registration review focused primarily on the active voter registration files and not what is commonly referred to as the deleted voter registration files.[1]

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[1] As Philadelphia's Voter Registration Administrator testified, the deleted files contain the voter registration records of those electors who have subsequently submitted a voter registration application for a different address. Unlike the majority of other counties in Pennsylvania, Philadelphia's system (which is not part of the SURE system) does not reference the same voter registration identification number assigned to an elector who changes his address. Rather, when another voter registration application is submitted, a brand new voter registration identification number along with a brand new registration date is assigned to the elector, and the old registration is placed into the deleted file. Thus, without a review of the deleted files, an elector's signature would be considered "defective" under the terms of the September 16, 2004 order because the active voter registration record indicates an address other than that stated on the Candidates' nomination papers when signed

As to the review to be conducted in Allegheny County, the September 16/20th order provided that the Commonwealth Court judges presiding over that review were to make "any further administrative rules that they deem necessary consistent with the Supreme Court's mandate to proceed forthwith." App. 73a. Consequently, Mark Wolosik, Director of the Allegheny County Elections Division, testified that he did not have the staff to review the 9,800 signatures being challenged in Allegheny County and requested that the court excuse his office from conducting a review of both the paper voter registration records that were in his office and the electronic voter registration records that resided on the SURE system. As a result, the Allegheny County review involved four computer terminals in two courtrooms in which the computers accessed an off-line copy of certain voter registration data that purportedly had been extracted on September 21, 2004 from the SURE system.

Because the September 16/20th order focused the signature review primarily on the voter registration status of the electors and affiants who had signed their nomination papers, the Candidates moved the Commonwealth Court to amend its order. In support of their argument, the Candidates pointed out that Section 951 of the Election Code, 25 P.S. §2911, required that only a "qualified elector" and not a "registered elector" sign nomination papers. Moreover, the Candidates noted that their argument had been accepted by at least one federal court in Pennsylvania.

Nevertheless, on September 27, 2004, the Commonwealth Court entered an order denying the Candidates' motion. App. 64a. Thereafter, the Commonwealth Court issued a *per curiam* memorandum

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months earlier or a date of registration that post dates the signing of the Candidates' nomination papers even though the elector has been continuously registered throughout the relevant period.

opinion in which it explained that is was not bound by the lower federal court's decision, and ruled that the Candidates' nomination papers "may be signed only by registered voters." App. 59a-63a.

Beginning on September 27, 2004, the Commonwealth Court began holding hearings as scheduled by the September 16/20th order. At the hearings, the Objectors' evidence as to the signers' status consisted solely of whether the signers were either not registered to vote, not registered to vote at the address listed on the nomination papers, or not registered to vote until after a date that they signed the nomination papers. However, as Mr. Wolosik admitted at the hearings in Allegheny County, the fact that a person is not registered in a particular county does not mean that they are not registered to vote in another county or not qualified to vote because they are less than 18 or lack the requisite 30-day residency. Moreover, the fact that a person is registered to vote but not at the address listed on the nomination papers, or did not become registered to vote until after the date he or she signed the nomination papers, indicates that the person is qualified to vote.

During the hearings conducted in Allegheny County, in particular, it was unrefuted that different search techniques and standards were being employed by the temporary and full-time staff employed by the Election Division to evaluate the signatures on the Candidates' nomination papers. One group of signers was examined three times during the voter registration review process, resulting in three different set of conclusions by the Election Division staff as to their voter registration status. Moreover, upon cross-examination, even Mr. Wolosik himself disagreed with some of the voter registration determinations made by his staff.

The hearings conducted by the Commonwealth Court concluded on October 12, 2004. Following the hearings, the Commonwealth Court judges presiding over the multiple

hearings entered findings of fact, opinions and orders, setting forth their conclusions as to the validity of the signatures challenged. Thereafter, on October 13, 2004, the Honorable James Gardner Colins, President Judge, combined those separate findings, conclusions and interim orders into the "Court Consolidated Findings and Conclusions." App. 2a-15a.

According to the Commonwealth Court's Consolidated Findings and Conclusions, of the 51,273 signatures submitted on the Candidates' nomination papers, a total of 7,506 signatures were made by persons who were not registered to vote. App. 13a. Further, a total of 1,470 signatures were made by persons who were not registered to vote until after the date that they signed the nomination papers. *Id.* Additionally, a total of 6,411 signatures were made by persons who were not registered to vote at the address listed on the Candidates' nomination papers. *Id.* Moreover, as part of the Court Consolidated Findings and Conclusions, President Judge Colins reported a total of 3,513 signatures described merely as "Other." *Id.*

Based on the Court Consolidated Findings and Conclusions, the Commonwealth Court determined that the Candidates' nomination papers lacked the requisite number of signatures of qualified electors to be placed on the Ballot. In particular, the Commonwealth Court ruled that 32,449[2] signatures were stricken from the Candidates' nomination papers, including the 15,464 signatures that were by persons who were either not registered to vote, not registered to vote at the address listed on the nomination papers, or not

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[2] By order dated October 14, 2004, the Commonwealth Court amended the Court Consolidated Findings and Conclusions to reduce the total stricken signatures from 32,455 to 32,449 and the total valid signature from 18,818 to 18,619.

registered to vote until after the date that they signed the nomination papers, or who had signed a nomination paper circulated by an affiant whose address listed on the nomination papers did not match his or her voter registration address.[3] As a result, the Commonwealth Court ruled that the total number of valid signatures on the Candidates' nomination papers equaled only 18,619, which was less than the 25,697 needed to be placed on the Ballot.

Proceedings In The Pennsylvania Supreme Court

On October 14, 2004, the Candidates filed a Notice of Appeal of the Commonwealth Court's October 13, 2004, judgment to the Pennsylvania Supreme Court. On that same day, the Pennsylvania Supreme Court entered a briefing schedule requiring all parties to submit briefs by 2:00 p.m. on October 15, 2004.

The Petitioners submitted a brief to the Pennsylvania Supreme Court in which they argued, *inter alia*, that the lack of uniformity in the procedure implemented for the review of the Candidates nomination papers violated their rights to due process and equal protection and also that the Commonwealth Court's construction of the term "qualified elector" to include a voter registration requirement violated Petitioners' rights to free political expression and association and to nominate the candidate of their choice.

The Pennsylvania Supreme Court did not hear argument and on October 19, 2004, issued a one-page *per curiam* order, without opinion, summarily affirming the judgment of the Pennsylvania Commonwealth Court. The Pennsylvania

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[3] As part of the proceedings below, the Commonwealth Court declared as invalid a total of 1855 signatures that were either forged or fraudulently obtained by some of the third-parties employed in Philadelphia, Pennsylvania, by the independent contractor that the Candidates' campaign had hired.

Supreme Court's order indicated that Justice Saylor dissented and would file a separate dissenting opinion.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Pennsylvania's decision to bar the Candidates from the Ballot ignored: (1) the manifest constitutional deficiencies of the county courts' widely varying procedures used to verify signatures on the Candidates' nominating papers, despite *Bush v. Gore*; and (2) the Commonwealth Court's erroneous construction of the requirement that the signatories of nominating papers be "qualified electors," despite *Buckley v. American Constitutional Law Foundation*. Because the lower court's decision is flatly contrary to the decisions of this Court, and in view of fundamental constitutional questions at issue, this Court should grant the writ.

I. THE DECISION BELOW IGNORED THE BLATANT AND UNCONSTITUTIONAL INCONSISTENCIES IN THE REVIEW PROCESSES USED BY DIFFERENT COUNTIES TO EVALUATE THE CANDIDATES' NOMINATING PAPERS.

The Fourteenth Amendment applies to the electoral processes of the states. *See Bullock v. Carter*, 405 U.S. 134, 140-141 (1972)(observing that "although we have emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections, this power must be exercised in a manner consistent with the Fourteenth Amendment"). In *Bush v. Gore*, 531 U.S. 98 (2000), the seminal case on the subject of statewide attempts to review and cure alleged abnormalities in the electoral process, the United States Supreme Court acknowledged that "when a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness were satisfied." *Bush*, 531 U.S. at 109.

Although the *Bush* case concerned the recount of votes cast in a presidential election as opposed to the nomination of a candidate, the Supreme Court acknowledged in its decision that the equal protection afforded by the Fourteenth Amendment applies to all phases of the voting process; in other words it applies equally to the "initial allocation of the franchise" as well as to the "manner of its exercise." *Id.* at 104.

In *Bush v. Gore*, the vote count between the candidates was so close that a manual recount was demanded. The manual review of ballots cast revealed certain irregularities in the registering of a voter's selection because of varying degrees of failure to perforate the ballot card with a stylus, the mechanism by which the voter's choice was recorded. The examination of the cards revealed instances where the card was fully perforated, partially perforated with a piece of the card left hanging (the "hanging chad") or merely indented. During the manual recount, the Supreme Court of Florida directed reviewers to determine the intent of the voter and count the ballot accordingly. Although this directive was deemed "unobjectionable as an abstract proposition and a starting principle. The problem inheres in the **absence of specific standards to ensure its equal application**." *Bush*, 531 U.S. at 106 (emphasis added). As a result, on review this Court observed that the absence of "specific rules designed to ensure uniform treatment ... led to unequal treatment of the ballots in various respects." *Id.*

A. Different Counties Used Different Standards to Determine Signatory Compliance With Voter Registration Requirements.

Much like the situation in *Bush v. Gore*, the purpose of the review process conducted below was to identify and resolve alleged irregularities in a substantive part of the electoral process – the nomination of independent candidates for President and Vice-President. The Commonwealth Court

scheduled multiple hearings to be held in 10 locations throughout the Commonwealth and ordered an immediate review in 48 counties of the nomination papers and the Objectors' challenges to the signatures of the electors and affiants set forth thereon. The method for determining the registration status of these signatories, however, was not uniformly applied across the 48 counties, thus violating the Candidates' Fourteenth Amendment rights.

All but eleven counties in Pennsylvania have adopted the SURE System, an on-line database that purports to provide accurate registration records for the Commonwealth. This system apparently provides a mechanism that allows election officials in each county to review this information on a statewide or county-by-county basis. It is not clear from the orders entered which counties, if any, accessed the statewide voter registration records. In Allegheny County, which utilized a limited, off-line copy of the SURE System database the voter registration information contained in this version included only the last and first name, residential address and "date of registration" for each registered elector in Allegheny County. This off-line database of the SURE system resulted in the striking of signatures of individuals that were not registered in Allegheny County, but who may have been registered in another county within the Commonwealth.

Of the eleven counties that do not subscribe to the SURE System, unique registration review methods were adopted. With the exception of Philadelphia County, the record does not clarify what methods were employed. In Philadelphia County, a computerized database unique to Philadelphia County was used, the Legacy System. Again, this limited the reviewers' access to information to registration records within Philadelphia County, resulting once again in the striking of signatories who may have been registered elsewhere within the Commonwealth.

B. Different Commonwealth Court Judges Used Different Standards to Determine the Voter Registration Status of the Challenged Signatories.

In addition to the inconsistency in the methods for accessing voter registration records utilized, different standards were applied toward determining whether the at-issue signer satisfied the registration requirements within each county. While most of the counties, as noted above, reviewed only those registration records maintained for their particular county, at least one presiding judge acknowledged that limiting a review of registration records to the county records alone does not equate to determining the registration status of the signatory within the Commonwealth. As pointed out by one judge with respect to the nomination papers for Montgomery County, where signatories might be registered elsewhere in the Commonwealth, Montgomery County Voter Services had no way of determining whether they were registered voters, and made no attempt to do so. Thus, because Section 951 of the Election Code requires only that the signers be "qualified electors of the State," this judge found that the Objectors had failed to meet their burden of proof that these out-of-county individuals were not qualified electors and refused to strike them. In contrast, other Commonwealth Court judges ruled that individuals who signed nomination papers for a particular county in which they were not registered were properly classified as "not registered" and sustained the Objectors' challenges to the signatures of such electors.

Other inconsistencies exist between the judges applying the Commonwealth Court's Order to their Findings and Conclusions. The various judges did not appear to reach a consensus as to treatment of those signatures allegedly struck by the Secretary of State. Relying on the ruling of the Pennsylvania Supreme Court on remand, in which it was

determined that "the Objectors Respondents assumed the Secretary's burden to prove the invalidity of signatures," several judges determined that the Petitioners bore the burden of proving that these signatures were valid. Consequently, where the Respondents failed to proffer sufficient evidence or failed to preserve those challenges by raising them on their own behalf, the signatures were not stricken. In startling contrast, another judge appears to have simply disqualified those signatures purportedly struck by the Secretary of State without requiring an additional offer of proof in support of such a determination.

The burden of proof was again an issue of some varied treatment when counsel for the Candidates was not present for the hearing. Although the Candidates were not represented during the proceedings before one judge, for example, she still held the Objectors to their obligation to present sufficiently persuasive evidence to justify the disqualification of signatures. In those proceedings conducted by another judge, however, when the Candidates' counsel was absent for a portion of the proceedings, she automatically struck those challenged signatures to which Candidates (by virtue of their absence from the courtroom) failed to raise objections. This treatment is especially troubling in light of the fact that the burden of proving the invalidity of signatures to the nomination paper at all times rests with the Objectors as a matter of Pennsylvania law.[4]

Finally, despite a cautionary note from Pennsylvania Supreme Court Justice Thomas G. Saylor in his October 1,

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[4] *See, e.g., In re Nomination of Driscoll*, 847 A.2d 44, 49 (Pa. 2004) (nomination papers are presumed to be valid and the objector bears the burden of proving otherwise); *Johnson*, 502 A.2d 142 (Pa. 1985) (a candidate is not required to affirmatively prove that his nomination signatures are valid).

2004 Concurring and Dissenting Statement, in which he advised that the question of the difference between qualified electors and registered electors had not been resolved, only two counties appeared to acknowledge their obligation to articulate instances where questions of proof remained unanswered as to signatories' status as qualified electors. None of the other Commonwealth Court judges expressly documented any information or evidence on this issue, again reflecting the inconsistencies rampant in the review process directed by the Commonwealth Court.

In sum, a uniform standard was not applied to the review of the Candidates' signatures. This lack of conformity admits of the very Equal Protection and Due Process violations addressed by this Court in *Bush v. Gore*. This Court accordingly should reverse and remand the decision of the Pennsylvania Supreme Court and instruct it to void the unconstitutional nominating paper review process.

II. THE PENNSYLVANIA SUPREME COURT'S CONSTRUCTION OF "QUALIFIED ELECTOR" TO INCLUDE A VOTER REGISTRATION REQUIREMENT VIOLATES PETITIONERS' RIGHTS TO FREE POLITICAL EXPRESSION AND ASSOCIATION, AND TO NOMINATE THE CANDIDATE OF THEIR CHOICE.

A constitutional analysis mandates that the term "qualified elector" in Section 951 of the Election Code does not encompass a voter registration requirement. This is starkly demonstrated by this Court's decision in *Buckley*, where this Court struck down a Colorado statute that required, among other things, that initiative-petition circulators be registered voters. 525 U.S. at 182. In finding this requirement unconstitutional, this Court recognized that petition circulation is "core political speech" involving "interactive communication concerning political change" and

thus is "at [the] zenith" of First Amendment protection. *Id.* at 183. Accordingly, this Court determined that in order for a voter registration requirement to pass constitutional muster, a state must present compelling reasons sufficient to overcome strict scrutiny. *Id.* at 194-195. *See also California Democratic Party v. Jones*, 530 U.S. 567 (2000) (laws which are severely burdensome to constitutional freedoms must be narrowly tailored to serve compelling state interests, while less burdensome statutes receive less exacting scrutiny).

In this case, no compelling state interest has been articulated to support the interpretation that the term "qualified elector" in Section 951 of the Election Code includes a voter registration requirement. Moreover, at least one federal district court has rejected such a contention vis-à-vis Section 951(d)'s requirement that an affiant of nomination papers be a qualified elector. *See Morrill v. Weaver,* 224 F. Supp. 2d. 882 (E.D. Pa. 2002). In *Morrill*, the federal district court was asked to rule upon the constitutionality of Section 951(d) of the Election Code. That subsection provides that circulators of nomination papers must sign an affidavit stating that the circulator is a "qualified elector" of the election district corresponding to the office that the candidate seeks, and that the signers of the nomination paper are also "qualified electors." *See* 25 P.S. §2911(d). The *Morrill* court analyzed various decisions of the Pennsylvania Supreme Court and the definitions of "qualified elector" contained in both the Election Code, 26 P.S. §2602(t) and the Pennsylvania Voter Registration Law, 25 Pa.C.S. §1102, after which it concluded that "there are qualified electors who are not registered to vote ... ." *Id.* at 896, n. 16.

Further, the *Morrill* court examined the various reasons proffered by the Commonwealth as to why a voter registration requirement should be construed into the definition of the term "qualified elector." *Id.* at 897-900.

Following that examination, however, the *Morrill* court found that constitutional construction mandates that the term "qualified elector" in Section 951 of the Election Code must be read to not include a voter registration requirement. *Id.* As the *Morrill* court explained:

> [Section 951 of the Election Code] continues to **burden the candidates' and others' core freedoms of political expression and association**. That is, candidates may not associate for purposes of political expression by organizing nominating petition signature drives with whomever they wish. Meanwhile, millions of unregistered Pennsylvanians are deprived of their right to associate with candidates in this manner, and cannot express themselves politically by serving as the affiants to their petitions. **Burdening the citizens' right of petition circulation burdens "the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication."**
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> ***
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> For all these reasons, we find that **demanding that nominating petition affiants in Pennsylvania be registered voters would impose a severe burden on Plaintiffs' and other Pennsylvania citizens' constitutional freedoms**. The Commonwealth has presented no compelling or sufficient reason to justify the burdensome registration requirement. The balance of the equities favors Plaintiffs.
>
> In light of *Buckley*, 25 P.S. §2911(d) must be given a constitutional construction, that **"qualified electors" who serve as**

> **nominating petition affiants need not be registered voters**. If we were to interpret §2911(d) otherwise, then strict scrutiny of the statute reveals that it is not narrowly tailored to meet a compelling government interest, it unconstitutionally burdens core First Amendment expression and association, and it must be struck down.

Morrill, 224 F.Supp.2d at 899-900 (citations omitted; emphasis added). *See also Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000), *cert. denied sub nom.* 531 U.S. 1147 (2001) (requirement that circulator of candidate nomination petitions be resident of political district pertaining to office candidate seeks is unconstitutional); *Lerman v. Board of Elections*, 232 F.3d 135 (2d Cir. 2000), *cert. denied,* 533 U.S. 915 (2001) (same).

The language concerning the "qualified elector" requirement for nomination paper signers contained in Section 951(c) of the Election Code is identical to that examined by the *Morrill* court for circulators contained in Section 951(d) of the Election Code. Thus, based on the same constitutional analysis performed in *Morrill*, signers of the nomination papers need only be qualified electors and not registered voters. Any other interpretation impermissibly infringes upon Petitioners' constitutional freedoms of free expression and free association with non-registered citizens who at the time of the general election are qualified to vote.

In this case, the Pennsylvania Supreme Court refused to follow the dictates of *Buckley* and *Morrill*. According to the Commonwealth Court, these cases purportedly do not govern "the case when a person seeks to exercise his or her right to support a candidate by signing a nomination petition or paper, as can be readily shown by the numerous decisions upholding state laws requiring signatures by registered voters." However, it is well established that under the Equal

Protection Clause and/or the First Amendment, there exists a "constitutional right of citizens to create and develop new political parties" and to cast their votes effectively. *Norman v. Reed*, 502 U.S. 279, 288 (1992). This right "advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences." *Norman*, 502 U.S. at 288. Consequently, to the extent that a state thwarts this interest by limiting the access of new parties to the ballot, the state must demonstrate a corresponding interest sufficiently weighty to justify the limitation, and the limitation must be narrowly drawn to advance such compelling state interest. *Id.* at 288-289. In other words, the same constitutional standard that was applied in *Buckley* and *Morrill* applies to a person who wants to sign a nomination paper for an independent candidate. As such, the Pennsylvania Supreme Court erred in refusing to follow the dictates of *Buckley* and *Morrill*.

In this case, a total of 15,387 valid signatures were struck solely because the persons were either not registered to vote, not registered to vote at the address listed on the nomination papers, or not registered to vote until after the date that they signed the nomination papers. The Objectors presented no evidence that such electors and circulators failed to meet the age and residency requirements mandated by the Pennsylvania Constitution. Rather, all of these signatures have been struck solely because the Commonwealth Court has judicially interposed a voter registration requirement into the definition of the term "qualified elector" that appears in Section 951 of the Election Code, even though such judicial activism serves no compelling state interest.

Moreover, such a construction of an otherwise clear and unambiguous legislatively defined term is not narrowly tailored to serve any state interest. Rather, such a

construction improperly excludes a number of electors who either have met or will meet by the November 2, 2004 general election the pertinent age and residency voting requirements from engaging in the most cherished of constitutionally protected activities: namely, the nomination of the candidate of their choice to be placed on the ballot for such election. *Norman*, 502 U.S. at 288-289. In fact, in this case alone, over 15,000 of the signatures that have been struck were from individuals who undisputedly are qualified electors but have been denied the ability to nominate their chosen candidates because they were not properly registered to vote at or prior to the time that they signed the Candidates' nomination papers.

Unlike major party candidates who are placed on the ballots through primaries, the nomination process is the only means by which qualified electors can have their independent candidates placed on the ballot so that they can cast their votes for such candidates at the general election. Thus, judicially interpreting the term "qualified elector" under Section 951 of the Election Code to mean only registered voters is not narrowly tailored to serve the purpose of ensuring that only qualified electors participate in the process. Rather, imposing a voter registration requirement serves only to exclude otherwise valid qualified electors from signing nomination papers merely because they were not registered to vote at the time they had signed the Candidates' nomination papers which they had until October 4, 2004 to do. *See* 25 Pa.C.S. §1326(b).

In sum, the Pennsylvania Supreme Court's interpretation of the term "qualified elector" in Section 951 of the Election Code unconstitutionally burdens Petitioners' core constitutional rights to freedom of expression and association. Accordingly, the decision must be reversed and vacated, and the signatures of "qualified electors" who were not also "registered voters" must be reinstated.

CONCLUSION

For the reasons stated above, Petitioners respectfully urge this Court to grant this Petition.

Respectfully submitted,

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{J-211-2004}
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	No. 1982 MAP 2004
	:	Appeal from the Order of the Commonwealth Court dated October 13, 2004, at No. 568 M.D. 2004.
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell	:	
Appeal of: Ralph Nader and Peter Miguel Camejo, and Their Independent Electors,	:	

ORDER

PER CURIAM **Decided: October 19, 2004**

AND NOW, this 19th day of October, 2004, the Order of the Commonwealth Court dated October 13, 2004, is affirmed. The Application For Supersedeas is denied. The Application For Intervention is dismissed as moot.

Mr. Justice Saylor dissents. Dissenting Statement to Follow.

IN THE COMMONWEALTH
COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell,	:	
Petitioners	:	No. 568 M.D. 2004

CONSOLIDATED FINDINGS,
OPINION AND ORDER

On September 20, 2004, the Supreme Court of Pennsylvania remanded this matter to this Court with directions to review every signature contained in the nomination papers of Ralph Nader and Peter Came .o (Candidates) to determine whether the Candidates had gathered a sufficient number of valid signatures to be listed on the Commonwealth's general election ballot. With the general election scheduled for November 2, 2004, and the 67 counties of this state waiting patiently to print their ballots, this Court, immediately upon receipt of the Supreme Court's directive, dispatched 11 of its 13 judges' to various counties

to review the challenges to the signatures submitted by the Candidates.[1]

President Judge Colins, Judge Smith-Ribner, and Senior Judge Mirarchi[2] presided over the Philadelphia signature review, reviewing the signatures contained in Volumes A, B, C, D, E, and F of the Objections to the Candidates Nomination Papers. Judge McGinley and Judge Pellegrini presided in Allegheny County and reviewed the challenges involving Allegheny County. Senior Judge Kelley reviewed the challenges for the nomination papers circulated in the counties of Armstrong, Beaver, Blair, Butler, Cambria, Centre, Clearfield, Fayette, Fulton, Indiana, Jefferson, Somerset, Washington, and Westmoreland, and later assisted in the Philadelphia review. Senior Judge Jiuliante presided over the review of signatures for the nomination papers circulated in the counties of Clarion, Crawford, Elk, Erie, Lawrence, Mercer, Venango, and Warren; while Judge Friedman presided over the review of nomination papers circulated in Bucks County, and Judge Leadbetter presided over the nomination papers circulated in Montgomery County, later completing the review of Volume F of the Philadelphia challenges. Judge Cohn Jubelirer presided over the review of nomination papers circulated in Adams, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, and Schuylkill Counties. Judge Simpson presided over the nomination papers circulated in Berks, Bradford, Columbia,

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[1] Senior Judge McCloskey did not participate in this matter, since he was presiding over an election challenge involving a Congressional race. Judge Leavitt recused, and did not participate in the challenge to the Nader nomination papers.

[2] Senior Judge Mirarchi reviewed signatures that were designated as duplicates. As a result, Judge Leadbetter and Senior Judge Kelley were later assigned portions of the Philadelphia objections. Judge Leadbetter reviewed Volume E. Senior Judge Kelley reviewed Volume F. Senior Judge Mirarchi reviewed pp. 231-257 of Volume B.

Cumberland, Dauphin, and Lackawanna Counties, as well as those circulated in Montour, Northampton, Perry, Susquehanna, Wyoming, and York Counties. Senior Judge Flaherty presided over the signature review for those nomination papers circulated in Delaware and Chester Counties. There were four counties to which no challenges to the nomination papers were filed. Those counties are Carbon (total signatures 3), Franklin (total signatures 1), Greene (total signatures 3), and Bergen County, New Jersey [sic] (total signatures 1), for a total of 8 unchallenged signatures.

This line-by-line review of individual signatures was both exhaustive and exhausting. Several Judges of this Court worked nonstop, 16 hours a day in order to complete the Supreme Court's mandate within a reasonable timeframe. Our final review indicates that 1,183 pages of nomination papers were filed, containing a total of 51,273[3] signatures submitted by the candidates.

By this Court's Order of August 20, 2004, both sides were directed to be prepared to present their case in the various forums commencing Monday September 27, 2004 and were told that cooperation from both sides was necessary if the review were to be done in anything approaching a timely manner and that the Court would not tolerate intemperate or obstructionist conduct on the part of either the Candidates or the Objectors. The Candidates, through then counsel Samuel Stretton, Esq., were warned that a review of over 50,000 signatures was an ominous undertaking requiring a great deal of manpower and expense and that the Candidates' pre-hearing cooperation in examining challenged signatures with the Objectors, such that potentially valid and invalid signatures could be stipulated to, would be essential to an efficient and timely review. The Candidates chose to ignore this Court's warning and proceeded to do as little as

[3] This number differs from the Department of State's tally of 52,398.

possible prior to the hearings, in an initial attempt to prevent an accurate tally of the signatures.

The review of signatures in Philadelphia was conducted in three ad hoc courtrooms that were made available to the Court by the Philadelphia Voter Registration Division of the Philadelphia City Commissioners. With the assistance of Commonwealth Court's Computer Department, each courtroom contained three computer monitors on which could be displayed voter registration information and scanned copies of voter signatures contained in the voter registration database of the Voter Registration Division. A fourth courtroom was subsequently added. The voter registration data reviewed by the Court was a true and accurate record of voter information contained in the Voter Registration Division's database as attested to by the Commission's Urban Registration Administrator, Robert Lee. A civil service employee of the Voter Registration Division operated a computer terminal in each courtroom. The Objectors provided the Court and the Candidates with three exhibits filed with the petitions to strike: exhibit 1, being a six volume document detailing the Philadelphia Objections; exhibit 2 set forth the "Global"[4] challenges; and exhibit 3 set forth the forgery challenges. Exhibit 1 was distributed among President Judge Colins, who was initially assigned Volumes A and B, Judge Smith-Ribner, who was initially assigned Volumes C and D, and Senior Judge Mirarchi, who was initially assigned Volumes E and F. Prior to the hearing date of September 27, 2004, at the direction of this Court, Robert Lee, and members of his staff, prepared a detailed report of each signature challenged and prepared a detailed report setting forth their line-by-line findings regarding the Objectors' challenges to individual signatures. Copies of

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[4] These "Global" challenges refer to challenges made to all of the signatures contained in one page for a single reason such as a faulty circulator's affidavit.

these reports were supplied to the candidates. The Court takes this opportunity to thank Mr. Lee and his entire staff for their tireless work on this project. Faced with an initial lack of cooperation from the Candidates, he and his staff produced records that were invaluable to this Court in resolving this matter.

When this Court's review began on September 27, 2004, the Candidates, in total disregard of this Court's order of August 20, 2004, were unprepared to respond to the allegations set forth in the Objectors Petition and chose instead to focus on delay and obfuscation.

From the very outset of the Philadelphia hearings, the Candidates repeatedly, and without foundation, charged that this Court had improperly shifted the burden of proof from the Objectors to the Candidates, ignoring the fact that, at all times, the burden of proof would rest with the Objectors. Rather than focus on the task at hand, the Candidates raised groundless issues of due process violations and repeatedly challenged the validity of our Supreme Court's decisions in *In re Nomination Petition of Silcox*, 674 A.2d 224 (Pa. 1996), and *In re Nomination Petition of Flaherty*, 770 A.2d 327 (Pa. 2001), decisions that had been re-affirmed by our Supreme Court in opinions filed as late as September 29, 2004, two days after these hearings began. In that opinion, *In Re: Nomination Papers of Ralph Nader, et al.*, No. 154 MAP 2004, Madame Justice Newman writing for a majority of the Supreme Court, (unanimous in reaffirming the holding of *Flaherty* and *Silcox*), held that

> The Commonwealth Court identified the correct standards that we have mandated in *Flaherty* and *Silcox*, regarding late registrations and the requirements for review of signatures and addresses. Further, Candidates' due process rights were not violated by the Secretary's rejection of

> signatures. Candidates' request for application of lesser standards may well portend their inability to meet the requirements we have established.

Id. at 32.

After three weeks of hearings and the expenditure of nearly a quarter of a million dollars of the taxpayers' money, this Court concludes that the Candidates have submitted only 18,818 valid signatures, and are thus not eligible to have their names placed on the November 2004 ballot as candidates for President and Vice-President. The following procedures were employed to reach this conclusion.

The Candidates challenged the work product and methodology employed by the voter registration offices. Additionally, Candidates challenged the original election petitions, advancing the notion that there was no explanation for "black lines" and "red lines" that allegedly inexplicably appeared on the original nomination papers. In order to address these concerns, a joint hearing was held before President Judge Colins, Judge Smith-Ribner, and Senior Judge Mirarchi beginning on September 27, 2004.

The Court addressed the issue by placing on the record the procedures employed to maintain the chain of custody of the original nomination papers. The procedures are detailed as follows. The Department of State transported the nomination papers filed by the Candidates to the Harrisburg offices of the Commonwealth Court where the papers were immediately placed into the custody of an armed security officer of Commonwealth Court. That official transported the Philadelphia nomination papers to the office of this Judge. This Judge then caused the nomination papers to be distributed to both Judge Smith-Ribner and Senior Judge Mirarchi. At all times the papers have been in the custody and control of the Court. Having explained that

procedure to the Candidates, Candidates continued to proffer the argument that there was no explanation of the black line or red markings on the nomination papers. This Judge then referenced the August 24, 2004 filing of the Department of State wherein the Department set forth that it reviewed the nomination papers and in instances where a defect was ascertained, the Department marked the signature with an "x" to the left of the line and circled the defect. This Court further noted that such is the Department of State's usual practice in reviewing all nomination petitions and papers it receives. (See Department of State August 24, 2004 filed title "Reply to the Order of the Court.") The Candidate continued to assert that there was no explanation for the black lines on the nomination petitions and sought to question Mr. Lee regarding the procedure employed for uploading information to the City of Philadelphia's voter registration database, and the manner employed to review signatures.

On direct examination by the Candidate, Mr. Lee testified as to his duties and qualifications as Urban Registration Administrator for the City of Philadelphia. Further, he described the procedures by which voter registration records are received and maintained by the Division. Mr. Lee testified that he oversees the daily operations of the Voter Registration Division including maintaining the accuracy of the voter registration files. That process includes maintaining a file of eligible voters that is used at polling places for determining voter eligibility; a knowledge of and compliance with the National Voter Registration Act of 1993, P.L. 103-21, 42 U.S.C. §§1973gg-1--1973gg-10, Pennsylvania Voter Registration Act (PVRA), Act of June 30, 1995, P.L. 170, as amended, 25 P.S. §§ 961.101--961.5109; and the Voting Rights Act, Act of June 29, 1982, 42 U.S.C. § 1973aa-6. (Notes of Testimony September 27, 2004, pp. 89.) Regarding the technology employed by the Division, Mr. Lee testified that the system

used is a CICS operation, with an installed imaging add-on that allows the Division to scan and index the signatures and affidavit images to the data record for each voter in the mainframe. This in turn eliminates paper documents. He further explained that the system is isolated and not on the City of Philadelphia's computer network or any other network. There is no outside access; the system is password protected at various levels. Only specific people in voter registration can access the system for maintenance and data input. (Notes of Testimony, September 27, 2004, pp. 9-12.) Finally, Mr. Lee testified that the system is designed so that once registrations have been entered; access is available to individual records by name, list of voters, and addresses. Mr. Lee testified that when preparing the reports for the Court, he did not use the original nomination papers but rather was working from copies of the nomination papers. The three Judges all found Mr. Lee's testimony 100% credible.

After it became obvious that the nomination papers were rife with forgeries, the campaign attorneys called Mr. Dominic Martino as a fact witness on September 29, 2004. Mr. Martino testified that he is the Campaign Coordinator for Pennsylvania. He testified that by June 2004 the campaign had gathered only 1,500 signatures on the nomination papers. (Notes of Testimony, September 29, 2004, p. 55.) John Sleven proprietor of a professional "ballot access company" was called in to gather the remaining 24,000 signatures. That company prepared and distributed a flyer that stated:

CASH NOW!
$100.00 to $200.00
per day
Petition to allow Ralph Nader on
The November Ballot
* * * *
We pay Daily Cash Advances! Paid by Signature!

See Exhibit marked "Objector -2", 9/29/04, appended hereto.

Mr. Martino further explained that he and John Sleven were both aware that individuals were repeatedly signing the petitions, and that many of the signatures were not authenticated. Further, he testified that he himself, and other campaign workers, in reviewing the petitions prior to filing, "black lined" signatures that were obviously deficient. (See Notes of Testimony, September 29, 2004, pp. 55-60.) These "blacklined" signatures were tabulated by President Judge Colins as "withdrawn by candidate prior to submission." (This was in direct contravention of Mr. Nader's attorney's previous statements regarding the "blacklined" signatures.)

Based on the testimony presented this Judge makes the following findings.

FINDINGS OF FACT

1. This Judge finds Mr. Lee's testimony credible.

2. This Judge accepts the work papers prepared by Mr. Lee and presented to this Judge at the hearings held September 27, 28, 29, 30, October 1, 4, 5, 7, 8, and 12. The findings made by Mr. Lee were reviewed by this Judge and have been incorporated into the document appended to this opinion and order and labeled findings of President Judge Colins.

3. Further, as to those signatures found to be a forgery, this Judge's findings are based on the credible testimony of Objectors' handwriting expert Ms. Renee Martin, as well as the Court's physical examination of the nomination papers.

4. This Judge finds the testimony of Mr. Martino credible as it relates to the gathering of signatures, and the "black lining" of signatures by Martino.

5. This Judge finds credible Mr. Martino's testimony that the campaign had knowledge that false signatures were submitted on the nomination papers of Candidates.

6. This Judge personally reviewed every line of those Philadelphia Nomination Papers occurring on Pages 4 to 230 from the whole of the nominating papers filed by the Candidates (referred to as the Volumes A and B pages).

7. This Judge incorporates by reference the findings of fact of Senior Judge Mirarchi as set forth at length as to the duplicate signatures.

8. This Judge incorporates-fully the conclusions of Senior Judge Mirarchi regarding the fraud and impropriety involved in the Objector's circulation process.

9. This Judge's -findings regarding the striking of individual signatures by page numbers and lines is set forth in the document attached hereto and named President Judge Colins Nader Summary Totals. This Judge merged the category of "forgery" and "signatures signed in the hand of another." (*Silcox issue*). This Judge merged the categories of Data Omitted and Printed Signatures.

10. This Judges findings regarding the striking of signatures, represented in totals, are as follows:

Total Signatures Reviewed	10794
Total Signatures Not Registered	2304
Total Signatures Not Registered at the Address	2100
Total Signatures Not Registered on the Date Signed	714
Total Signatures marked Non-Existent or Out of County	271
Total Signatures Illegible	72
Total Signatures where data omitted	237
Total Signatures deemed forgeries	568

Total Signatures marked duplicates	168
Total Signatures withdrawn by Candidate at hearing	791
Total Signatures Blacklined Prior to Submission by Candidate	291
Total Signatures Stricken	7516
Total Signatures Valid	3278

CONCLUSIONS

1. This Judge reviewed a total of 10,794 signatures.

2. After reviewing the10,794 signatures this Judge finds that

10,794 Signatures Reviewed
7,516 Signatures Stricken
3,278 Signatures Valid

3. With respect to Mr. Justice Saylor's concurring and dissenting opinion in *In re Nomination Papers of Nader*, ____ Pa. ____ A.2d ____ (No. 171 MM 2004, filed October 1, 2004), directing that we consider grounds for striking signatures other than the fact that the electors are not registered, we report that the following signatures were stricken only on the grounds that the elector was not registered (2,304) (however, the Court does not make the corollary finding that all of the electors were subsequently validly registered), not registered at the address at the time of signing (2, 100), and was not registered at the time of signing (714).

The specific page numbers and line numbers are set forth in the exhibit marked President Judge Colins Nader Summary Totals.

In addition, this Court wishes to commend Basil Culyba, Esquire, admitted *pro hac vice*, who represented candidates commencing October 1, 2004 for showing the

highest standards of professionalism and integrity. Mr. Culyba's conduct, legal knowledge, and ethics, as well as those of objectors' attorney, Gregory Harvey, are of the highest caliber ever witnessed by this Judge.

COURT CONSOLIDATED FINDINGS and CONCLUSIONS

1. The President Judge finds that the Candidates and Objectors, particularly in the nomination papers denominated the "Allegheny Petitions" entered various stipulations relating to withdrawn signatures. The President Judge finds that the total number of signatures submitted on the Candidates nomination papers equals 51,273, 1,119 less than the recorded by the Department of State.

2. The President Judge incorporates all findings and conclusions of the Judges of this Court which and sets forth that the totals for all nomination papers are as follows:

Total Signatures Not Registered	7506
Total Signatures Registered After the Date of Signing	1470
Total Signatures Not Registered at the Address	6411
Total Signatures Data Omitted	1869
Total Signatures Information Written in the Hand of Another	7851
Total Signatures Printed	8
Total Signatures Illegible	166
Total Signatures Forged	687
Total Signatures Nicknames or Initials	32
Total Signatures Duplicates	1087
Total Signatures Affidavit Problems	1855
Total Signatures Other	3513
Total Signatures Reviewed	51273
Total Signatures Stricken	32455
Total Signatures Valid	18818

3. After reviewing the 51,273 signatures this Court finds that

51,273 Signatures Reviewed
32,455 Signatures Stricken
18,818 Signatures Valid 4

4. With respect to Mr. Justice Saylor's concurring and dissenting opinion in In re Nomination Papers of Nader, Pa. A.2d (No. 171 MM 2004, fled October l, 2004), directing that we consider grounds for striking signatures other than the fact that the electors are not registered, we report that the following signatures were stricken solely on the grounds that the elector was not registered at the time of signing (1,470), and that adding this number to the valid signatures would still leave the candidates 5,409 short. The specific page numbers and line numbers are set forth in the exhibit marked President Judge Colins Nader Summary Totals.

CONCLUSION

In conclusion, the President Judge must state that that he has served longer on the Commonwealth Court than any other Judge in the Court's history and, as a result thereof, has reviewed more nomination petitions than any other Judge in the Court's history. I am compelled to emphasize that this signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the Candidates, through their representatives (not their attorneys), shocks the conscience of the Court. In reviewing signatures, it became apparent that in addition to signing names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and the ubiquitous "Ralph Nader," there were thousands of names that were created at random and then

randomly assigned either existent or non-existent addresses by the circulators.

A detailed line-by-line breakdown of the pages and lines reviewed and the reasons for disqualification has been prepared by each judge and follows. Accordingly, the Court enters the following

ORDER

AND NOW this 13th day of October 2004, upon consideration of the Petitioner's Petition to set aside the nomination papers of Ralph Nader and Peter Miguel Camejo for the Office of President and Vice-President in the General Election of November 2, 2004 and the hearings related thereto conducted throughout the Commonwealth of Pennsylvania, we find as follows: that the number of signatures required on the nomination papers for the office of President and Vice-President is 25,697 (25 P.S. §2911). The nomination papers consist of 51,273 signatures. Based on the evidence presented by Petitioner at the hearings, and the parties' various stipulations, the Court concludes that 18,818 valid signatures were submitted; therefore, the nomination papers contained 6,879 signatures less than the required 25,697 signatures. Accordingly, the petition to set aside is **GRANTED**.

Further, the Secretary of the Commonwealth is directed not to certify the names of Ralph Nader and Peter Miguel Camelo as candidates for President and Vice-President of the United States in the November 2, 2004 general election.

/s/ James Gardner Colins
JAMES GARDNER COLINS, President Judge

{J-176-2004}

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	No. 154 MAP 2004 Appeal from the Order of the Commonwealth Court dated August 30, 2004, at No. 568 M.D. 2004.
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell	:	
Appeal of: Ralph Nader and Peter Miguel Camejo, and Their Independent Electors,	:	Submitted: September 10, 2004

OPINION

MADAME JUSTICE NEWMAN

Filed: September 29, 2004

In this case, we must determine whether Ralph Nader (Nader) and Peter Miguel Camejo (Camejo) (collectively, the Candidates) will appear on the November 2, 2004 Pennsylvania General Election ballot (the ballot) as Independent Political Body candidates for the respective

offices of President and Vice President of the United States. We reject the Commonwealth Court's determination that Section 951 (e) of the Election Code, 25 P.S. § 2911(e), as applied to Candidates, disqualifies them from appearing on the ballot. For the reasons that follow, we reverse the Order of the Commonwealth Court, which set aside the Nomination Papers of the Candidates and directed the Secretary of State not to print their names on the ballot for the 2004 Pennsylvania General Election, and remand for an expedited hearing on the validity of the signatures.

FACTS AND PROCEDURAL HISTORY

The Parties

The case involves the upcoming Presidential election and the right of Ralph Nader and Peter Miguel Camejo to appear as candidates of an Independent Political Body for President and Vice President of the United States on the ballot for the Pennsylvania General Election scheduled for November 2, 2004.

Appellees, Linda S. Serody et al. (the Objectors), are registered voters in Pennsylvania who filed objections to the Nomination Papers[5] that Nader and Camejo filed on August 2, 2004, with the Secretary of the Commonwealth of Pennsylvania seeking to have their names printed on the November 2, 2004 Pennsylvania General Election ballot as Independent candidates for the respective offices of

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[5] Pursuant to the Pennsylvania Election Code, Act of June 3,1937, P.L. 1333, as amended, 25 P.S. §§ 2600-3591 (Election Code), candidates who run in party primaries file "nomination petitions" and those who are candidates of political bodies (independent of minor parties) file "Nomination Papers." Those filing Nomination Papers, such as Nader and Camejo, must obtain a number of signatures equal to two percent (2%) of the last highest vote obtained in a statewide election. Section 951 (b) of the Election Code. In this case, Nader and Camejo were required to obtain the signatures of 25,697 individuals, based on the number of votes that Justice Max Baer received in the last statewide election.

President and Vice President. The Nomination Papers included 52,398 signatures in support of their candidacy.[6]

The Objectors' Challenges

A. The Election Code

Objectors contend that, pursuant to Section 951 (e) of the Election Code,[7] the Candidates are further disqualified

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[6] Objectors allege that the number of signatures was "more than 47,000." Petition to Set Aside the Nomination Papers of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President of the United States, 7 5, (Petition), Reproduced Record (RR) at A-39.

[7] Section 951 (e) of the Election Code provides that:

> **(e) There shall be appended to each Nomination Paper offered for filing an affidavit of each candidate nominated therein, stating**--(1) the election district in which he resides; (2) the name of the office for which he consents to be a candidate; (3) that he is eligible for such office; (4) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses, and prohibiting corrupt practices in connection therewith; (5) that his name **has not been presented as a candidate by nomination petitions for any public office to be voted for at the ensuing primary election, nor has he been nominated by any other Nomination Paper filed for any such office;** (6) that in the case where he is a candidate for election at a general or municipal election, he was not a registered and enrolled member of a party thirty (30) days before the primary held prior to the general or municipal election in that same year; (7) that, in the case where he is a candidate for election at a special election, he is not a registered and enrolled member of a party.

25 P.S.! § 2911 (e) (emphasis added).

This section is sometimes referred to as the "sore loser' provision, because it is generally intended to prevent losers of party

from appearing on the Ballot because they were placed on the Michigan general election ballot as the nominated Presidential and Vice Presidential candidates of the Reform Party of Michigan.[8]

The Registrar of Voters in the County of Sacramento certified that on April 27, 2004, Camejo was registered in Sacramento County as a member of the Green Party and that he registered with that party on July 29, 2003. The Objectors contend that because of this, his nomination in Pennsylvania violates Section 951.1 of the Election Code, 25 P.S. § 2911.1, which requires that Pennsylvania independent candidates disaffiliate from a political party in Pennsylvania thirty days before the primary election.[9] The Objectors contend that Camejo's Affidavit dated July 28, 2004, which claimed that he was not an enrolled member of a political

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primaries from running as independents. *In re Zulick*, 832 A.2d 572 (Pa. Cmwlth. 2003), aff'd, 834 A.2d 1126 (Pa. 2003) (candidate for judge of the Court of Common Pleas cross-filed on the Republican and Democratic ballots in the May 2003 primary and was defeated on both tickets. He then circulated Nomination Papers to run as a candidate of the Reform Party for the same position in the November 2003 election. The Commonwealth Court held that forbidding a candidate who ran in a primary for a major party from running in a general election as a candidate for a minor party did not violate equal protection).

[8] The question of whether or not Candidates will appear on the Michigan ballot as Reform Party candidates is currently in litigation in that state.

[9] § 2911.1 Limitations on eligibility of candidates

> Any person who is a registered and enrolled member of a party during any period of time beginning with thirty (30) days before the primary and extending through the general or municipal election of that same year shall be ineligible to be the candidate of a political body in a general or municipal election held in that same year nor shall any person who is a registered and enrolled member of a party be eligible to be the candidate of a political body for a special election.

party, constituted a false representation, because Camejo was, at that time, an enrolled and registered member of the Green Party in California.

B. The Challenges to the Signatures

On August 9, 2004, the Objectors filed a Petition that challenged approximately 34,000-35,000 of the signatures, alleging, inter alia, that the Nomination Papers contained numerous defective or illegible signatures, as well as those of unregistered voters and fictitious persons.[10] Further, the Objectors contested the supporting Affidavits of those who circulated the Nomination Papers The Nomination Papers consisted of 1,189 separate documents, accompanied by the Candidates' Affidavits. Petition at T 4. The Objectors received the Candidates' Nomination Papers on August 3, 2004, and by August 9, 2004, had to complete their review of the signatures. They produced several volumes, documenting each signature that they were challenging and explaining the basis for the challenges. Transcript at 105. Objectors worked round-the-clock, cancelled vacations, and brought in volunteers. Id.

Because of the alleged deficiencies, the Objectors argue that the Nomination Papers did not contain the required 25,697 valid signatures, and that the Candidates are not qualified to appear on the ballot.

In addition to the signatures challenged by the Objectors, the Secretary of the Commonwealth, although accepting the Nomination Papers, rejected 4,936 signatures submitted by the Candidates for a variety of reasons.

The Case Management Order

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[10] Objectors' counsel stated at the hearing that they were challenging 37,000 signatures. Transcript of Hearing of August 27, 2004 (Transcript) at 81.

By Order dated August 11, 2004, the Commonwealth Court scheduled a status conference with parties' counsel, which was held on August 19, 2004. The Order noted that:

> the purpose of the status conference is to set a date for an evidentiary hearing on the various objections . . . . At the present time, the court expects to conduct simultaneous hearings on the individual signature challenges in not less than five courtrooms, before five different judges, located throughout the state.

Commonwealth Court Order dated August 11, 2004. (emphasis added). At the conference, Candidates objected to the court's Order directing the use of multiple judges sitting at different locations to hear the challenges, and requested additional time to review the signatures. The Objectors stated that they were "ready and available to begin each of the five hearings contemplated by [the August 11, 2004] Order as soon as the court requests" such hearings. Objectors' Joint Case Management and Status Conference Statement dated August 18, 2004. The court stated that it had committed four commissioned judges of the court to work on nothing else (presumably signature review) until the matter is concluded. Transcript at 18. Additionally, the court later indicated that it had five judges, and more if needed, to work on the case. Id. at 31. The court denied Candidates' objections on August 19, 2004, stating that time is of the essence in election matters, and reminding counsel for Candidates that the Rules of Professional Conduct require a lawyer to control his workload so that each matter may be handled adequately. Counsel for Candidates offered to conduct a "statistical review" of a number of the signatures that were challenged,

noting that if patterns of fraud were detected, the Nomination Papers would be withdrawn.[11]

The Commonwealth Court issued a *Per Curiam* Case Management Order (Case Management Order) on August 19, 2004, requiring the parties to commence their review of the Philadelphia Registration Commission records and to schedule arrangements with the Voter Registration Administrator for review of the record. In addition, the Commonwealth Court further ordered that after review of those records, the parties were to enter into a stipulation identifying the number of signatures submitted in the Nomination Papers, the number of signatures being challenged, the page and line numbers for the challenges, and the basis for the challenges or objections.[12] The Commonwealth Court, in a subsequent Order, explained that "[w]ith the substantial number of signatures at issue here ... a fair and just resolution of the signature challenges would require the commitment of significant resources by the Candidates with the view of entering into stipulations as to many if not most of the challenged signatures." Commonwealth Court Memorandum and Order dated September 9, 2004, at 5. The Case Management Order also provided that the court would commence oral argument before a three judge panel of the court on August 27, 2004, and that:

> [t]he President Judge of the Commonwealth Court shall convene hearings before the Court on Objectors' challenges to the Nomination Papers on

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[11] The record does not contain any reference as to what, if anything, occurred with respect to this offer.

[12] The Objectors note that "conventional case management directives ... have been used in election nomination cases for almost a decade . . . ." Brief for Appellees at 21.

> Friday, September 3, 2004 and shall continue until said challenges are concluded. Counsel for the parties are to remain available for hearings at all dates and times scheduled by the Court, including evenings and weekends.

Case Management Order dated August 19, 2004, at 2. Based on its previous Order of August 11, 2004, the court intended to conduct simultaneous hearings, using the significant resources it identified and would make available to resolve the signature challenges.

The Signature Review Process

When the Commonwealth Court convened on August 27, 2004 for the oral argument, no stipulations had been implemented. Volunteers for the Candidates had reviewed only 1,371 signatures of the 23,149 signatures that Objectors challenged in Philadelphia, or, roughly six percent (6%). Transcript at 10. Counsel for the Candidates testified that he "can't control the volunteers" and that "we didn't have enough volunteers." Id. Further, he testified that it took about five minutes per signature, using each available computer. Id. Using ten terminals, for eight hours a day, counsel stated that a thousand signatures a day could be reviewed, "if we have enough people to man ten terminals. We did yesterday, I don't know today.... the maximum we could get would be about 5,000 more signatures, 6,000 more.... I'm pushing them. I have told them they have to get me the volunteers. I don't have that stock of volunteers." Id. at 21-22. On the day of the hearing, volunteers were using the two available terminals in Pittsburgh. Addressing the comment of the President Judge, counsel agreed that "if that fifty-three percent not registered number ran through its course, there wouldn't be enough signatures." Id. at 13. Further, Candidates' counsel stated to the court that his signature

review was "not proceeding fast enough." Id. at 17. The signature review was proceeding at an average rate of 150 signatures per day. The court noted that "[a]t this rate, less than half of the challenged signatures in Philadelphia would have been reviewed, **for the limited purpose of stipulations only**, prior to Election Day." Commonwealth Court Memorandum and Order dated September 9, 2004, at 3 (emphasis added). Further, the Commonwealth Court found that the preliminary review by Candidates' counsel showed that of the 1,371 signatures checked, fifty-three percent (53%) were not registered at all, and another twenty-one percent (21 %) had address or timing discrepancies, which were not amendable pursuant to the holdings of this Court in In re Nomination Petition of Silcox, 674 A.2d 224 (Pa. 1996) and In re Nomination Petition of Flaherty, 770 A.2d 327 (Pa. 2001). Transcript at 12. Further, twenty to thirty signatures were "clearly fraudulent." Transcript at 14.

Candidates' counsel estimated that he would need to review "about 20,000" more signatures in Philadelphia, and that it was "humanly impossible" to examine the allegedly defective 32,000 signatures. Id. at 21, 31. Based on these preliminary findings, the Commonwealth Court projected that "the rate of invalidity would place the number of signatures below the required number of 25,697." Commonwealth Court Memorandum and Order dated September 9, 2004, at 4. Counsel argued that the Commonwealth Court had not "given us time to prepare [,]" but stated that "[y]ou have bent over backwards for us, but that's not enough." Id. at 38-39.

The Commonwealth Court Order of August 30, 2004

A. The Statute

On August 30, 2004, in a Memorandum Opinion and Order, the Commonwealth Court ordered that the

Nomination Papers of the Candidates be set aside and that the Secretary of the Commonwealth be directed not to print the names of Nader and Camejo on the ballot for the 2004 Pennsylvania General Election. The Commonwealth Court found that the Candidates were disqualified because of their nomination by the Reform Party and, at the same time, dismissed their objections to the procedural standards regarding review of the signatures.[13]

The Candidates argued that they do not meet the statutory "sore losers" test because they did not run in the Pennsylvania primary. The court rejected this argument, finding that:

> case authority exists to defeat the argument that Candidates' rights would be unduly burdened if the Court were to hold that [Section 2911(e)] ... prohibits ballot status in Pennsylvania to the independent candidates for President and Vice President while they simultaneously run for the same offices as candidates in Michigan under the Reform Party nomination.

Commonwealth Court Opinion dated August 30, 2004, at 6. The court determined that the statutory language was clear and that the prohibition "does not run afoul of the state's interests in regulating elections in Pennsylvania." Id. at 7. The court held that because Nader and Camejo filed their Nomination Papers as candidates of the Reform Party in Michigan, they violated Section 951 (e) of the Election Code, requiring that their Nomination Papers be set aside.

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[13] The Candidates raised three procedural objections, asserting that: (1) objections to later registrations should be stricken; (2) Pennsylvania's requirements for review of signatures and addresses are too stringent and should not be applied to them; and (3) they were not notified of the signatures that the Secretary of Commonwealth struck and were, as a result, denied due process.

The court further disqualified Camejo because his affidavit indicated that he was not enrolled in a political party, which was not true because of his membership in the Green Party in California.

B. The Challenges to the Signatures

Having determined that the Candidates were not qualified to be on the ballot due to their Reform Party nomination, the Commonwealth Court then addressed the three procedural objections. First, Candidates argued that certain later registrations should be permitted, contending that persons who sign and mail registration cards during the circulation period may be properly registered, even though they do not appear on the registration list. The court cited as precedent *Petition of Joseph J. O'Hara*, 795 A.2d 513 (Pa. Cmwlth. 2002) (single judge opinion by Simpson, J.) (holding that the postmark on the registration application was the determining factor when a registration is subsequently approved) and *In re Nomination Petition of Roth*, (Pa. Cmwlth., No. 121 M.D. 2002, filed March 8, 2004) (single judge opinion by Feudale, S.J.) concluding that where the necessary step of delivering the registration cards to an appropriate registration official was lacking, the registrations were not valid). As a result, the court in the matter *sub justice* concluded that individuals whose applications were delivered or postmarked after the date on which they signed the Nomination Papers were not "qualified elector[s],"[14] and their signatures would be stricken. Counsel for Candidates testified that there were

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[14] Section 102(t) of the Election Code, 25 P.S. § 2602(t), defines "qualified elector" as "any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election."

fifty-two signatures that fell into this category. Transcript at 12.

With respect to Candidates' second assertion that Pennsylvania case law establishes requirements for signature and address review that are too stringent,[15] the court noted that it "does not have the authority to disregard precedent set by the Supreme Court" and that it would not apply the "less stringent" standard that the Candidates requested regarding signature review. Id. at 10-11.

The court also rejected Candidates' third procedural challenge, which contested the striking by the Secretary of the Commonwealth of 4,936 signatures. Pursuant to Section 976 of the Election Code, 25 P.S. § 2936, where a Nomination Paper contains the requisite number of facially valid signatures, such as the one that Candidates submitted, the Secretary:

> although not hereby required to do so, may question the genuineness of any signature ... appearing thereon, and if he ... shall thereupon find that any such signature ... [is] not genuine, such signature . . . shall be disregarded in determining whether the ... Nomination Paper ... contains a sufficient number of signatures as required by law ....

25 P.S. § 2936. In response to Candidates' assertion that they were denied due process because they were not notified of the stricken signatures and had no opportunity to contest them, the Commonwealth Court noted that in the instant matter, the Objectors had supplied all of the signatures that they were challenging, had provided the reasons for striking the signatures, and, as a result, Candidates were placed on notice of the challenge and had

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[15] Candidates referred to decisions of this Court in *Flaherty* and in *Silcox*.

the opportunity to defend against it. As a result, the court dismissed the Candidates' objections to the striking of the nearly 5,000 signatures by the Secretary of the Commonwealth.

The Requests for a Stay

Following the August 30, 2004 Order setting aside the Nomination Papers and striking the Candidates' names from the ballot, the Candidates appealed to this Court, which ordered the parties to file briefs by September 10, 2004. Pending this appeal, the Candidates requested a stay from the Commonwealth Court of its Order, which the Commonwealth Court denied on September 9, 2004. On September 13, 2004, the Candidates filed a Petition for Review of Appellants of the Denial of Their Request for a Stay and Supersedeas with this Court. Based on our disposition of the matter *sub justice*, denied Candidates' Petition as moot by Order dated September 20, 2004.

In its Memorandum and Order denying the stay, the Commonwealth Court concluded that although it had "yet to review a single signature," the likelihood of success on the ultimate merits "appears slim indeed." Commonwealth Court Memorandum and Order dated September 9, 2004, at 2. The court noted that on August 19, 2004, the "Candidates objected to [its] Order directing the use of multiple judges sitting at different locations to hear the challenges, and requested additional time to review the signature challenges." *Id.* at 2-3. Further, at that conference, Candidates' counsel offered to conduct a statistical review of some of the challenged signatures and to withdraw the papers if patterns of fraud were discerned. Counsel for Candidates indicated that the Objectors had talked to someone and developed a plan regarding how to select signatures to include in the random analysis. Transcript at

15-16. However, the record does not indicate that this was done.

In denying the stay, the Commonwealth Court explained that when it convened next, on August 27, 2004, the Candidates' volunteers had reviewed only 1,371 of the 23,149 signatures challenged in Philadelphia, or, roughly six percent (6%). At this rate, the court calculated that less than half of the challenged signatures in Philadelphia would be reviewed, for the limited purpose of stipulations only, prior to Election Day. Id. at 3. The court questioned whether Candidates' counsel had adequate resources for the matter. Because the Candidates' preliminary review showed that of the 1,371 signatures checked, fifty-three percent (53%) were not registered voters, another twenty-one percent (21 %) had address or timing discrepancies, which were not amendable, and, at this rate of invalidity, the number of signatures would be below the mandated 25,697. Id. at 4. Accordingly, the Commonwealth Court held that Candidates were unlikely to succeed on the merits, and did not meet the criteria for a stay established by *Pennsylvania Public Utility Comm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

The court also stated that it was "uncontested that Camejo signed a false candidate's affidavit in the instant matter' and that "[t]his alone would prevent him from appearing on the ballot." Commonwealth Court Memorandum and Order dated September 9, 2004, at 4.

With respect to potential harm, the Commonwealth Court held that the Candidates, at that juncture, were not "irreparably harmed" because if the matter did proceed to signature challenges, "further delay or inability of the Candidates to commit resources for a timely review of the challenged signatures would harm the objectors, upon whom the ultimate burden of proving invalidity rests." *Id.* at 5. Because there were so many signatures involved, if the Candidates did not commit "significant resources" toward

attempting to resolve as much as possible by stipulation, the result would be that "Candidates, merely by being obstreperous, could remain on the ballot through the device of delaying the Court's proceedings through Election Day." *Id.* at 5. The Commonwealth Court took notice that prospective absentee military voters and others would have to be notified of the names to be included on the ballot, and that "[e]very time a court order changes these names, additional notifications are or may be required. The public interest, therefore, dictates that these changes should be kept to a minimum." *Id.*

The Commonwealth Court cited the failure of Candidates' counsel to cooperate in a preliminary review of signatures, even though the court placed the resources of the Philadelphia Election Commission and the Allegheny County Board of Elections at its disposal. Based on that, the court concluded that "for whatever reasons the Candidates are seeking to obstruct a timely review in all of the issues in this case." *Id.* at 6.

The Transcript contained numerous instances where Candidates' counsel complained that he lacked the time, resources, and volunteers to conduct the signature review in accordance with the Case Management Order. With regard to his involvement in the signature review process, Candidates' counsel stated that "we try to do our best, but we are busy lawyers.... I took this on with a very limited scope of representation for the Nader campaign." Transcript at 9. He further testified that "I can't control the volunteers." *Id.* at 10. "[W]e didn't have enough volunteers." *Id.* "I have not been sitting on my hands, and, yes, I have been on trial all over the state, but that's me. I try a lot of cases." *Id.* at 15. "[I]t's not proceeding fast enough, and that's the problem." *Id.* at 17. "[T]hey have to get me the volunteers. I don't have that stock of volunteers." *Id.* at 22.

To illustrate further, in Petitioners' Opposition to Respondents' Petition and Motion to Dismiss, the Objectors note that at the August 19, 2004 pre-trial conference, Candidates' counsel requested a delay of "several weeks," which was denied because "time was of the essence." At the same conference, the court granted Candidates' counsel's request that the hearings not begin on September 1, 2004, because he had another court appearance in another matter scheduled that day, and directed, instead, that the hearing commence on September 2, 2004. From August 23-27, 2004, the Objectors note that Candidates' counsel acknowledged that he was before a District Justice on August 23, 2004, in the morning and a Common Pleas judge in Chester County in the afternoon, arguing the constitutionality of the driving under the influence legislation. On August 24, 2004, he was in Columbia County Court of Common Pleas in a criminal case; on August 25, 2004, he was in Montgomery County Court of Common Pleas in a criminal case; on August 26,2004, he was in Adams County Court of Common Pleas in the morning on a criminal case. During the week of August 30-September 3, 2004, Objectors noted that counsel may be required to conduct two federal trials. RR at A-190. President Judge Colins noted that he called Judge McVerry of the United States District Court for the Western District of Pennsylvania "to free you from those commitments." Transcript at 5.

DISCUSSION

Standard of Review

This Court may reverse a Commonwealth Court's order concerning the validity of challenges to a nomination petition only if the Commonwealth Court's findings of fact are not supported by substantial evidence in the record, there was an abuse of discretion, or there was an error of law. *See Flaherty*, 770 A.2d at 331. Moreover, in reviewing election

issues, we must consider the longstanding and overriding policy in our Commonwealth to protect the elective franchise. See *Weiskerger Appeal*, 290 A.2d 108, 109 (Pa. 1972). In promoting that policy, this Court has made clear that the Election Code must "be liberally construed in order to protect a candidate's right to run for office and the voters' right to elect the candidate of their choice." *Flaherty*, 770 A.2d at 331. Furthermore, nomination petitions are presumed to be valid and an objector has the burden of proving that a nomination petition is invalid. *See* Section 927 of the Election Code, 25 P.S. § 2937; *In re Nomination Petition of Joseph Driscoll*, 847 A.2d 44, 49 (Pa. 2004).

I. The Statute

We turn to the first prong of the Commonwealth Court's decision, which held that the Candidates are disqualified from appearing on the Pennsylvania General Election ballot because their Nomination Papers failed to comply with Section 951 (e) of the Election Code, as a result of their nomination by the National Convention of the Reform Party of the United States and concomitant appearance on the Michigan ballot as Candidates for President and Vice President.

For the reasons that follow, we conclude that the Commonwealth Court committed an error of law when it held that this provision of the Election Code prohibits these Candidates from appearing on the ballot.

Section 951 of the Election Code provides:

> (e) There shall be appended to each Nomination Paper offered for filing an affidavit of each candidate nominated therein, stating--(1) the election district in which he resides; (2) the name of the office for which he consents to be a candidate; (3) that he is eligible for such office; (4) that he

> will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses, and prohibiting corrupt practices in connection therewith; (5) **that his name has not been presented as a candidate by nomination petitions for any public office to be voted for at the ensuing primary election, nor has he been nominated by any other Nomination Paper filed for any such office**; (6) that in the case where he is a candidate for election at a general or municipal election, he was not a registered and enrolled member of a party thirty (30) days before the primary held prior to the general or municipal election in that same year; (7) that, in the case where he is a candidate for election at a special election, he is not a registered and enrolled member of a party.

25 P.S. § 2911 (e) (emphasis added).

Similarly, Section 976 of the Election Code provides, in relevant part that:

> No nomination petition, nomination papers or nomination certificate shall be permitted to be filed if--. . . (e) in the case of nomination papers, if the candidate named therein has filed a nomination petition for any public office for the ensuing primary, or has been nominated for any such office by nomination paper previously filed ...

25 P.S. § 2936 (emphasis added).

Candidates argue that these provisions, often referred to as the "sore loser" provisions, are intended to refer only to candidates who run in Pennsylvania primaries and in Pennsylvania elections and do not address activities of the Candidates in other states, such as Michigan. Because the Candidates did not run in the Pennsylvania primary, and, perforce, did not lose any such primary election here, they contend that they do not meet the ban set forth in the statute. They further argue that as applied to them, it violates their First Amendment rights of association and Fourteenth Amendment rights to equal protection under the law to run in Pennsylvania as independent candidates, regardless of their nomination as candidates of the Reform Party and ballot position outside of Pennsylvania.[16]

We are mindful of the unusual factual predicate involved in the case before us and that neither the parties nor the Commonwealth Court have cited any case that is analogous to the one *sub justice*, i.e., one where a state law has been applied to prohibit a candidate nominated by a different party in a different state from running for office in the state imposing the restriction.

The Commonwealth Court erred in determining that the language of the Statute clearly addressed the instant situation. The words in the Statute do not support this conclusion. Although an argument can be made that the language applies only to candidates in Pennsylvania, because the Statute lacks any narrowing language, it is equally arguable that it could apply to candidates outside the confines of the Commonwealth, as well. Because the words are ambiguous, we cannot resolve the instant issue on the

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[16] It is not necessary for us to address the equal protection claim because we agree that the statute, as applied to Candidates, deprives them of their First Amendment associational rights, in the absence of any showing of state interest regarding their out-of-state nomination by the Reform Party.

basis of the statute's language. Therefore, we must turn to the Candidates' constitutional claim.

We find the Commonwealth Court's reliance on *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), to be misplaced, because the United States Supreme Court did not answer in that case the question that we confront today. In *Timmons*, a Minnesota election code provision prohibited an individual from appearing on the ballot as the candidate of more than one party.[17] The New Party chose Andy Dawkins (Dawkins) as its candidate for State Representative. Dawkins was already the candidate of another party in Minnesota for that same office. The New Party sued state election officials, claiming that the "anti-fusion"[18] law violated its associational rights, and the Supreme Court rejected this contention. The Court stated that "[t]he First Amendment protects the rights of citizens to associate and form political parties . . ." while it affirmed that "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Timmons*, 520 U.S. at 357-58 (*quoting Storer v. Brown*, 415 U.S. 724, 730 (1974)). Although the statute prohibited the New Party candidate from appearing on the ballot as the nominee of two different parties, the Court noted that the New Party was still free to convince Dawkins to be its candidate rather than the other party's, and Dawkins would appear on the ballot regardless. Therefore, the Court

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[17] The statute provided that "[n]o individual who seeks nomination for any partisan or nonpartisan office at a primary shall be nominated for the same office by nominating petition. . . ." Minn. Stat. § 204B.04, subd. 2. Further, the statute required that a candidate have "no other affidavit on file as a candidate for any office at the same primary or next ensuing general election." *Id.* at § 204B.06, subd. 1(a)(2).

[18] Most states ban multiple party, or "fusion," candidates from elected office. *Timmons*, 520 U.S. at 353.

in Timmons found that the burden on the New Party's rights was not severe. This is inapposite to the instant matter, for two parties are not vying for the placement of Nader and Camejo on the ballot, and, if they do not appear as independent candidates, they will not appear on the ballot in Pennsylvania.

The Court in *Timmons* adopted its earlier analysis in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), with respect to the test that must be applied in deciding whether a state election law violates First and Fourteenth Amendment associational rights. In Anderson, the United States Supreme Court found that Ohio's early filing deadline for independent candidates for President placed an unconstitutional burden on the voting and associational rights of independent candidate Anderson's supporters. The Court noted that "[t]he impact of candidate eligibility requirements on voters implicates basic constitutional rights," which included the right of individuals to associate to advance political beliefs and the right of qualified voters to cast their votes, rights that "rank among our most precious freedoms." *Id.* at 786-87 (footnote omitted). In resolving constitutional challenges regarding whether a state election law violates First and Fourteenth Amendment associational rights, the Court noted that:

> [i]t must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it

> necessary to burden the plaintiffs rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Id. at 789.

We note that in Anderson, the state argued three separate interests to justify its statutory early filing provision: (1) voter education; (2) equal treatment of all candidates (the independent candidate and the candidate participating in a primary declared their candidacy on the same date); and (3) political stability. *Id.* at 796-806. The Supreme Court rejected all of them, finding that none constituted a legitimate interest on the part of the state to justify the early filing deadline. "[E]ven when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty." *Id.* at 806.

In the matter before us, the Commonwealth has not intervened or appeared, and, therefore, has not offered any reason, let alone one that is "compelling," to justify its interest in prohibiting Candidates who have been nominated by the Reform Party in other states from running as independents in this Commonwealth. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (internal citations and

footnote omitted).[19] The Commonwealth Court's references to other cases describing state interests regarding various restrictive provisions in the Election Code cannot substitute for the requirement that where a precious freedom such as voting is involved, a compelling state interest must be demonstrated. This is certainly paramount given that the application of Section 951 (e) here completely precludes Candidates from running for national office in Pennsylvania:

> [I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all of the voters in the Nation. . . . Thus in a presidential election a State's enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders.

Anderson. 460 U.S. at 794-95.

Due to the complete absence of any evidence with respect to the state's interest here, we hold that the Commonwealth Court erred in applying Section 951 (e) to disqualify the Candidates from running as independents in Pennsylvania because of their nomination by the Reform Party, in Michigan, and other states.

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[19] This case involved an equal protection challenge to election laws that made it virtually impossible for a new or small party to be placed on the state ballot to choose electors for the candidates of President and Vice President. A new party was required to obtain petitions signed by fifteen percent (15%) of the number of ballots in the last election, whereas the Republican and Democratic parties were required to obtain only ten percent (10%).

Objectors further allege that, pursuant to Section 951.1, Camejo is ineligible to be a candidate in Pennsylvania because of his membership in the Green Party in California. Further, they contend that because of Camejo's failure to disclose his party membership in his signed Affidavit, he is disqualified from appearing on the ballot as an Independent Political Body. Candidates argue that, in the same way Section 951(e) of the Election Code was unconstitutionally applied to them, Section 951.1 was also unconstitutionally applied to Camejo because it violated their rights, as well as the rights of voters and parties, under the First and Fourteenth Amendments.[20] The Commonwealth Court disqualified Camejo, finding that Section 951.1 applied to him.

Referring to our earlier recitation of the standard of review, *supra* p. 17, and level of scrutiny applied to constitutional challenges alleging First Amendment violations, *supra* p. 21, we reverse the determination of the Commonwealth Court. The Commonwealth has not intervened, thus failing to supply any reason, compelling or otherwise, to justify its interest in prohibiting candidates who are members of a party in another state from running as independents in this Commonwealth. We opine that, where

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[20] This Section states in relevant part:

> Any person who is a registered and enrolled member of a party during any period of time beginning with thirty (30) days before the primary and extending through the general or municipal election of that same year shall be ineligible to be the candidate of a political body in a general or municipal election held in that same year nor shall any person who is a registered and enrolled member of a party be eligible to be the candidate of a political body for a special election.

25 P.S. § 2911.1.

the fundamental right to vote is at issue, a strong state interest must be demonstrated. Instead, we find that Section 951.1 was wrongfully applied to Camejo, it is not necessary for us to address Objectors' argument that the fact that Camejo failed to disclose his membership should disqualify him.

Candidates' further aver that Section 951.1 violates the Equal Protection Clause of the Fourteenth Amendment because they, as independent political bodies, are required to file Affidavits where candidates running as nominees of political parties are not."[21] However, Candidates' insufficiently present this argument. They cite no authority supporting their position. Rather, they merely make the assertion without providing any support for it. Further, the United States Supreme Court has stated that where there had been an allegation that an election code provision violated the Equal Protection Clause of the United States Constitution, "the Equal Protection Clause allows States considerable leeway to enact legislation that may appear to affect similarly situated people differently. Legislatures are ordinarily assumed to have acted constitutionally." *Clements v. Fashing*, 457 U.S. 957, 962 (1982). Candidates' efforts fall short of establishing that this leeway was contravened.[22]

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[21] See Section 910 of the Election Code.

[22] Candidates made another argument regarding the application of the provisions of the Election Code to prohibit their appearing on the ballot. They argue to this Court that Section 951 of the Election Code should be applied not to Camejo, but only "to the 21 presidential electors, who are the nominated Pennsylvania candidates, all of whom are registered independent or unaffiliated in Pennsylvania." Brief of Appellants at 4-5. Candidates did not include this issue in their Brief in Support of the Motion to Dismiss Objectors' Challenges, and it is waived. "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a).

II. The Procedural Objections

Because we have determined that the Commonwealth Court erred in applying the relevant portions of the Election Code to Candidates, we must now address the issue of the signatures. As a preliminary matter, we note that Candidates assert that we need not review these procedural objections because the Opinions of this Court, upon which the objections are based, are unconstitutional. However, Candidates fail to offer sufficient support for their bald allegations. Candidates' repeatedly argue that in order to avoid a First Amendment violation, a lesser standard of review must be applied to them because they are running for a nationally elected position. This allegation is unpersuasive. Simply asserting that a particular regulation will restrict ballot access does not amount to a violation of the First Amendment right to free association.

A. The Late Registrations

Candidates argue that because the registration process can take several days, persons who signed and mailed in registration cards during the circulation period may not have appeared on the registration list, yet may have been properly registered. At the hearing, Candidates' counsel testified that of the 1,371 signatures reviewed, the number of late signatures was fifty-two, or four percent (4%). The Commonwealth Court held that delivery to an appropriate registration official is required and that only an elector who has delivered a completed application to registration officials or has postmarked the application on or before the date of signing the petition is a "qualified elector' pursuant to Section 951 of the Election Code.

Section 951 (c) of the Election Code, 25 P.S. 2911(c), provides, *inter alia*, that "each person signing a nomination paper shall declare therein that he is a qualified

elector of the State or district, as the case may be. . . ." The Commonwealth Court held that "an elector who has either delivered a completed application to registration officials or has postmarked that application on or before the date of signing the petition is a 'qualified elector' under Section 951 of the Election Code." Commonwealth Court Opinion dated August 30, 2004, at 10. Accordingly, the only individuals who may validly sign Nomination Papers are those who (1) previously registered to vote; or (2) delivered their completed application to election officials the same day that they signed the Nomination Papers; or (3) postmarked their completed application the same day that they signed the Nomination Papers. Candidates argue that striking the signatures of Pennsylvania voters who registered to vote after signing Nader's Nomination Papers is unconstitutionally burdensome and overbroad. Yet, Candidates present no precedent to support their position. They fail to present the standards for determining if such a requirement is either burdensome or overly broad. Without this minimum showing, we cannot entertain such an argument. Further, we agree with the Commonwealth Court's determination that transmittal of a registration application is necessary to effectuate registration. The requirement that the signing of Nomination Papers occur after or simultaneous with voter registration serves the compelling governmental interest of ensuring that only qualified electors participate in the nomination process. Accordingly, we agree with the Commonwealth Court that the signature of any individual whose application was delivered or postmarked after the day that he or she signed the Nomination Papers must be stricken.

B. The Stringent Signature Requirements

Candidates next challenge the application of the stringent signature requirements that this Court has upheld in recent cases. In *In re Nomination Petition of Silcox*, 674

A.2d 224 (Pa. 1996), we held that an elector who signs a nomination petition must personally write his occupation, place of residence and date on the petition. Candidates aver that "[t]raditionally, the name was signed by the person, but the circulator would often fill in the rest of the information." Brief of Appellant at 44. Although we recognized that the Election Code must be construed liberally, we noted that Section 908 of the Election Code, 25 P.S. § 2868, provides in relevant part that each elector "shall add his residence, giving city, borough or township, with street and number, if any, and shall also add the date of signing, expressed in words or numbers..... 25 P.S. § 2868 (emphasis added). Based on the plain meaning of the statute we affirmed the Order of the Commonwealth Court that struck the candidate's nomination petition. In *In re Nomination Petition of Flaherty*, 770 A.2d 327 (Pa. 2001), we struck printed names on a nominating petition that did not match the electors' signature on their voter registration cards, struck signatures where the electors' addresses did not match the address on their voter registration cards, and struck signatures where the circulator was not present when each elector signed. We noted that "[e]lectors are required to sign their name to a candidate's nomination petition as a means of preventing forgery and assuring that each elector personally signs the petition with an understanding of what he is signing." *Id.* at 332. We further stated:

> A person's name as signed is perceived to be an insignia used by that person to represent herself and generally is made in a manner that is not easily traceable, as in the case of the person's printed name. Given this difference, as well as the importance of insuring the integrity of the election process, we find that in stating that a person must "sign" the nomination petition, the General Assembly intended that a person make that

> insignia that the person uses to represent herself, rather than print her name.

Id. at 333. With regard to the requirement that the elector's address on the petition match the address on the voter registration card, we held that absent extraordinary circumstances, an individual who signs a nomination petition that lists an address other than the one provided on his voter registration card is not a qualified elector. We also abrogated prior case law, including *In re Nomination Petition of Martin*, 257 A. 2d 247 (Pa. 1969), and held that a circulator must be present to witness the signing of a nomination petition.

The Candidates suggest that the impact of these decisions on collecting signatures for Nomination Papers for a national election is onerous, and point to the fact that in this case, 25,697 signatures are required for ballot access. They aver that the signature requirements set forth in Silcox and Flaherty unduly burden ballot access in violation of the Federal Voting Rights Act (Federal Voting Law) and the First and Fourteenth Amendments. The Candidates' note that the Federal Voting Law provides:

> No person acting under color of law **shall deny the right of any individual to vote** in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election ...

42 U.S.C. § 1971 (a)(2)(B) (emphasis added). Reliance on this section of the Voting Rights Act is misplaced because *Silcox* and *Flaherty* do not concern the right of an individual to vote. Rather, they explain the steps

that a candidate must take in order to be properly placed on a ballot.

The Candidates further assert that the signature requirements impact upon their First and Fourteenth Amendment rights to association. They urge this Court to decline to apply our recent holdings interpreting the signature requirements of the Election Code. Candidates point out that while they need to gather more than 25,000 signatures, a candidate running for the Pennsylvania Senate needs to gather only 500 signatures. They argue that the signature requirements, although strict, are not burdensome when a candidate is running for a state position, but rise to the level of being too burdensome when, as here, more than 25,000 are required. They fail to note that they can request signature support from every registered voter of the Commonwealth while trying to gain the necessary signatures, while those running for a state office may gather only signatures of registered voters within their district. Instead of providing any support for their contention, Candidates merely repeat that our current case law imposes an onerous burden. They fail to provide, and we likewise fail to find, any authority holding that such signature requirements are unconstitutional.

Further, as noted by the Commonwealth Court, establishing a lesser standard for the Candidates likely implicates significant equal protection issues. *See* Commonwealth Court Opinion dated August 30, 2004, at 8. We cannot justify applying one set of standards to the Candidates and more exacting requirements to all other persons seeking ballot access. We believe that Candidates have done nothing more than baldly assert a violation of their First Amendments rights in an attempt to secure relief on a claim lacking validity. Because we find their claim utterly lacking merit, we decline to engage in a substantive analysis of their allegations of ballot access violations.

C. The Signatures Struck by the Secretary

Candidates assert that the Commonwealth Court erred by denying them relief on their claim that the action of the Secretary of the Commonwealth in striking 4,936 signatures from their Nomination Papers without providing them with notice was a violation of due process. Section 976 of the Election Code, 25 P.S. § 2936, authorizes the Secretary of the Commonwealth to disregard any signature that appears not to be genuine when determining if the Nomination Papers contain the sufficient number of signatures. Significantly, although the Secretary rejected 4,936 signatures, he accepted the Candidates' Nomination Papers because he concluded that 25,697 signatures appeared facially valid. Reply to the Order of Court filed by Secretary of the Commonwealth, August 24, 2004, at 2. In light of the acceptance of the Nomination Papers, the actions of the Secretary did not directly harm the Candidates. Had the Secretary rejected the Nomination Papers, the Candidates would clearly have been entitled to seek judicial relief. Section 976 of the Election Code provides that a refusal of the Secretary to receive and file a Nomination Papers may be reviewed by the court upon an application to compel its acceptance as of the date when it was presented.

Where, as here, the Secretary accepts Nomination Papers, the Commonwealth Court recognized the potential for signatures stricken by the Secretary to become a deciding factor in a later objection hearing. When this occurs, the court recognized that bringing a mandamus petition to reinstate the stricken signatures may not be practical due to time constraints. Instead, it approved the approach taken by the Objectors, who included the signatures already rejected by the Secretary in their Objections to the Nomination

Papers.[23] Because the Objectors utilized this procedure, the Candidates had notice of the stricken signatures, and the Objectors assumed the Secretary's burden to prove the invalidity of the signatures.

The Candidates assert that the fact that the Commonwealth Court suggested the possibility of seeking relief in mandamus indicates that it unfairly placed the burden on them to challenge the Secretary's decision. They note that mandamus was not a possible remedy because the Secretary failed to advise them of his actions in a timely manner. However, the court recognized that the procedure employed in the instant matter, whereby the Objectors incorporated into their Objections the signatures stricken by the Secretary and gave notice to the Candidates of the identity of the signatures and the basis for the challenges, was sufficient to meet the requirements of due process. The Candidates correctly note that a fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 552 (1965). Here, the procedure that was used, and approved, by the court provided for the Candidates to be advised of the signatures that the Secretary had rejected, thereby giving them an opportunity to rebut the arguments and evidence presented by the Objectors in support of the Secretary's striking of the signatures. Accordingly, the requirements of due process were met in this matter.

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[23] Counsel for the Objectors stated that "[o]ur position on those strikes is that we have incorporated by reference in our petition to set aside the Secretary's strikes, and we will prove those strikes.... We have incorporated the fact that the Secretary did it as giving notice to the other side that we intend to pursue that objection, but the burden is on the objectors to prove that." Transcript at 83.

CONCLUSION

The Commonwealth Court erred by applying Section 951 to the Candidates to preclude their appearance on the ballot in Pennsylvania for the offices of President and Vice President on November 2, 2004. While we acknowledge the complexity of the task of striking a balance between the associational rights of citizens under the First Amendment to form political parties and the practical need and right of the state to regulate elections, there has been no state interest asserted or proved to justify excluding Candidates from our ballot as an Independent Political Body merely because they have been nominated by the Reform Party in other states.

The Commonwealth Court identified the correct standards that we have mandated in *Flaherty* and *Silcox*, regarding late registrations and the requirements for review of signatures and addresses. Further, Candidates' due process rights were not violated by the Secretary's rejection of signatures. Candidates' request for application of lesser standards may well portend their inability to meet the requirements we have established.

The Commonwealth Court stood ready to commit every conceivable resource toward resolving the question of contested signatures in a way that would respect the deadlines and realities of the impending election. For example, the court involved the Philadelphia County Board of Elections and the Allegheny County Election Board to ensure that the parties had access to their records, including on weekends, immediately remedied a problem that arose with computer terminal access in Pittsburgh, committed four commissioned judges of the Commonwealth Court and one senior judge to work on nothing else but the instant case, until concluded, cancelled arguments in other of its cases in Harrisburg, arranged to have court employees work at night and on weekends, and delayed major proceedings and

overdue opinions. These are extraordinary arrangements, put in place to accommodate a significant challenge.

The court was ready to proceed, and the Objectors, who have the burden of establishing the invalidity of the signatures that they challenged, claim they are ready to proceed. We note that throughout oral argument on August 27, 2004, Candidates' counsel repeatedly requested more time, and alleged that if trial had been set for October 1, 2004, "by September 29 I would be in a position to say, Yes, we are proceeding or no, we are not." Transcript at 35. Because more than three weeks have elapsed, it is reasonable to expect Candidates' counsel to be prepared to go forward with this matter.

The Commonwealth Court, nevertheless, did not review any signatures, despite the accommodations it made, because of Candidates' inability to comply with the court's procedures and commit the resources necessary for the task. Recognizing the approach of the November 2, 2004 General Election, we reverse the Order of the Commonwealth Court, deny the Request for Supersedeas requested by Candidates, and remand the matter for expedited hearings, applying the standards set forth by this Court, regarding the validity of the signatures.

Mr. Chief Justice Cappy files a Concurring Opinion, joined by Mr. Justice Castille who also joins the Majority Opinion, and Mr. Justice Nigro.

Mr. Justice Saylor files a Concurring Opinion.

Mr. Justice Saylor Files a Concurring Opinion.

{J-176-2004}
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	: No. 154 MAP 2004 : : Appeal from the Order : of the Commonwealth : Court dated August 30, : 2004, at No. 568 M.D. : 2004.	
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell	:	
Appeal of: Ralph Nader and Peter Miguel Camejo, and Their Independent Electors,	:	Submitted: September 10, 2004

CONCURRING OPINION

MR. CHIEF JUSTICE CAPPY

Filed: September 29, 2004

I join the majority opinion, and in particular Part II, regarding the procedural objections that Ralph Nader ("Nader") and Peter Miguel Camejo ("Camejo") (collectively, the "Candidates") raised. I also agree with Part

I of the majority opinion that Section 951 (e) and Section 951.1 of Pennsylvania's Election Code, 25 P.S. §§2911(e), 2911.1, do not disqualify Nader or Camejo from appearing on the Pennsylvania General Election ballot. 1 write separately to set forth an alternative rationale for this conclusion, which is based on statutory construction. More specifically, I conclude that the General Assembly did not intend for Sections 951(e) and 951.1 presently to apply.[24]

I am guided by the following principles. Under the Statutory Construction Act, the object of all statutory construction is to ascertain and effectuate the General Assembly's intention. 1 Pa.C.S. §1921(a). Every statute is to be construed, if possible, to give effect to all of its provisions. Id. When the words of a statute are clear and free from ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. §1921(b). When, however, the words of a statute are not explicit, the General Assembly's intent may be ascertained by considering a variety of factors, which include the occasion and necessity for the statue; the circumstances of its enactment; the mischief it remedies; the object it attains; and the consequences of a particular interpretation. 1 Pa.C.S. §1921(c). Moreover, it may be presumed that the General Assembly does not intend to violate the United States or Pennsylvania Constitutions; does not intend an absurd or unreasonable result or one impossible of execution; and that it intends the entire statute to be effective and certain. 1 Pa.C.S. §1922(1)-(3). Finally, the Election Code is to be liberally construed so as not to deprive the voters of their right to elect a candidate of their choice or an individual of his right to run for office. *In re Silcox*, 674 A.2d 224, 225 (Pa. 1985).

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[24] Because I would resolve the issues relating to Sections 951(e) and 951.1 on a statutory construction basis, I would not reach the constitutional arguments raised in connection therewith.

I turn first to Section 951(e).[25] In my view, this provision is not explicit as to whether it applies to a person, like Nader or Camejo, who seeks to appear on the ballot in this Commonwealth as an independent candidate for a national office, but who has been nominated by a party for that office in another state. While some of the words in the provision at issue are broad and all-inclusive, certain others suggest that the legislature was not concerned with this sort of political activity beyond Pennsylvania's borders. Therefore, Section 951 (e) is ambiguous. See 1 Pa.C.S. §1921(b).

Thus, resort to the factors listed in 1 Pa.C.S. §1921(c) to ascertain the General Assembly's statutory intent is in order. The purposes that Section 951(e) serves and the difficulties it aims to avert are instructive. It has been recognized that Section 951(e) prevents cross-nominations by prohibiting a candidate from appearing on the ballot as the candidate of more than one political group, see Patriot Party of Allegheny County v. Allegheny County Dep't. of Elections, 95 F.3d 253, 256 (3d Cir. 1996), and prevents the election ballot from being cluttered by candidates who hope to multiply the number of times their name appears on the ballot under various labels. *Packrall v. Quail*, 192 A.2d 704, 706 (Pa. 1963).[26]

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[25] As noted on page 18 of the majority opinion, Section 976 of the Election Code, 25 Pa.C.S. §2936, reflects Section 951(e)'s requirements.

[26] Section 951 (e) also prevents a loser in a primary from running in the general election as an independent or another party's candidate. *See In re Zulick*, 832 A.2d 572 (Pa. Cmwlth. 2003), aff'd, 834 A.2d 1126 (Pa. 2003). This statutory purpose is not relevant. It is because the Candidates filed nomination papers in Pennsylvania as candidates of a independent political body for the offices of President and Vice President in the November 2004 General Election and are simultaneously running as candidates for these same offices in Michigan by nomination of the Reform Party that Section 951 (e) was raised by the Objectors.

In this case, however, these purposes and aims of Section 951 (e) are not implicated. That is, despite Nader's and Camejo's nomination in Michigan by the Reform Party and their concomitant appearance on the Michigan ballot as candidates for President and Vice President, under the nomination papers they have filed in the Commonwealth, their respective names will appear only once on the Pennsylvania ballot in connection with the November 2004 General Election as independent political body candidates for these offices. Thus, I do not believe that the General Assembly intended that Section 951(e) apply to the Candidates before us.

Moreover, inasmuch as this analysis of the legislature's intent in Section 951(e) avoids any infringement upon the Candidates' constitutional rights, it is consistent with the presumption that the General Assembly intends constitutional enactments, see 1 Pa.C.S. §1922(3), and insofar as it upholds access to the ballot, it is mindful of the liberal construction that election laws are to be given. *See In re Silcox*, 674 A.2d at 225.

I likewise conclude that Section 951.1, 25 Pa.C.S. §2911.1, under which the Commonwealth Court ruled that Camejo cannot appear on the ballot as the candidate of a political body because of his membership in the (minor) Green Party, is inapplicable. I believe that the language of this provision, which includes "thirty (30) days before the primary...." as its reference point of disaffiliation, when read in context, clearly reveals that that the General Assembly intended it to apply to major, not minor, political parties. This is so because in the Election Code, the legislature has determined that only major parties may gain ballot access through the primary process. *See Heicklen v. Pennsylvania Board of Electors*, 751 A.2d 260, 262 (Pa. Cmwlth.), *aff'd per curiam*, 747 A.2d 894 (Pa. 2000)(holding that 25 Pa.C.S. §2872.2 is capable of only one meaning; that minor political

parties must nominate candidates by nomination papers and are not entitled to participate at party primaries.)

Further, even if Camejo's affidavit were deemed to be false in this regard, I do not believe that his name should have been removed from the ballot on this basis. In *State Ethic Comm'n v. Baldwin*, 445 A.2d 1208 (Pa. 1982), we tempered our holding in *In re Nomination Petition of Cianfrani*, 359 A.2d 383 (Pa. 1976), and explained that before an affidavit may be declared void and invalid because it contains false information, there must be evidence that the candidate knowingly falsified the affidavit with the intent to deceive the electorate. *Baldwin*, 445 A.2d at 1211-12. As the record revealed no intent to deceive on Camejo's part, there was no reason to disqualify him from ballot status based on statements he made in his affidavit.

Accordingly, I join the majority in reversing the Order of the Commonwealth Court dated August 30, 2004, and remanding this case to the Commonwealth Court for expedited hearings on the Petition to Set Aside the Nomination Papers of Ralph Nader and Peter Miguel Camejo.

Messrs. Justice Castille and Nigro join this concurring opinion.

[J-176-2004] [M.O. – Newman, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	: No. 154 MAP 2004 : : Appeal from the Order : of the Commonwealth : Court dated August 30, : 2004, at No. 568 M.D. : 2004.
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell	:
Appeal of: Ralph Nader and Peter Miguel Camejo, and Their Independent Electors,	: Submitted: September 10, : 2004

CONCURRING OPINION

MR. JUSTICE SAYLOR

Filed: September 29, 2004

Although I am in substantial alignment with the majority's disposition, like Mr. Chief Justice Cappy, I would apply a different analysis centered on statutory interpretation, rather than constitutional infirmity.

As recited by the majority, pursuant to Section 951 of the Election Code, to appear on the ballot as an independent candidate an individual must submit "nomination papers" reciting, *inter alia*, that he has not been "presented as a candidate by nomination petitions for any public office to be voted for at the ensuing primary election, nor has he been nominated by any other nomination papers filed for any such office[.]" 25 P.S. §2911(e)(5). I acknowledge that, in the abstract, this language could be read to suggest a cross-jurisdictional, anti-fusion proscription, which might raise the sorts of constitutional concerns that the majority undertakes to evaluate. A closer examination reveals, however, that the designated, operative terms "nominating papers" and "nominating petitions" pertain exclusively to Pennsylvania-specific submissions, *i.e.*, documents that are "in form prescribed by the Secretary of the Commonwealth." Id., §§2911(a), 2867. *See generally In re Bedow*, 848 A.2d 1034, 1037 (Pa. Cmwlth. 2004). It seems clear, then, that the General Assembly intended the prohibition here at issue to apply to individuals who have been otherwise nominated in Pennsylvania, as it would be unreasonable to assume that Pennsylvania election forms are used for election purposes in other states. Thus, by its terms, Section 951 simply does not have an extraterritorial focus or application.

A similar analysis pertains to the statutory disaffiliation provision grounding Appellees' distinct challenge to Mr. Camejo's candidacy based upon his ongoing affiliation with the California Green Party. Although Section 951.1 of the Election Code specifies that any individual who was a member of a "political party" during the relevant time period is excluded as a candidate of a political body, see 25 P.S. §2911.1, for purposes of this provision a political party is defined with reference to political bodies that received certain minimum threshold vote levels in Pennsylvania in the

prior general election. See 25 P.S. §2831 (defining "political party" and "political body"); see also 25 P.S. §2602(n, p) (specifying that the terms "political party" and "political body" are defined, for purposes of the Election Code, as set forth in section 801 of the Code, i.e., 25 P.S. §2831). Thus, it seems evident that the General Assembly intended the exclusion at issue to apply only to members of organizations considered "political parties" according to these in-state standards.[27]

Here, although Appellees equate the California Green Party with the Pennsylvania Green Party, they do not develop the specific grounds for such direct association. In such circumstances, it is questionable whether Mr. Camejo's candidacy is in tension with Section 951.1 in the first instance; therefore, I would include within the scope of the remand a directive to the Commonwealth Court to undertake the necessary fact finding, particularly as this may obviate the constitutional question addressed by the majority. *See generally Commonwealth v. Failor*, 564 Pa. 642, 64647 n.5, 770 A.2d 310, 312 n.5 (2001); *Cheek v. United States*, 498 U.S. 192, 203, 111 S. Ct. 604, 611 (1991).[28]

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[27] I do not concur in the Chief Justice's reasoning that, because only major political parties may hold primaries, and the beginning of the requisite time period for disaffiliation under Section 951.1 begins 30 days before the primary, see 25 P.S. §2911.1, it necessarily follows that the Legislature only intended the disaffiliation requirement to apply to major parties in the first instance. Because, as noted, the term "party" is defined by the Election Code, and the definition includes both major and minor parties, I see no reason to interpret that term more narrowly for purposes of Section 951.1 simply because the relevant time period is defined by reference to the date on which the primary election is held.

[28] I also distance myself from the majority's substantive, constitutional analysis on this point, particularly as it does not address the United States Supreme Court's approval of a similar political disaffiliation statute in *Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274 (1974), cited by Appellees.

In summary, I would reverse the Commonwealth Court's order as to Mr. Nader on the basis that the relevant provision of the Election Code, 25 P.S. §9711(e), was not intended to impose constraints relative to individuals who are nominated by political parties in other states in a national election, and remand for additional fact finding in relation to the Section 951.1 challenge to Mr. Camejo's candidacy.[29]

I also support the majority's decision to direct the initiation of the signature-review process in the Commonwealth Court -- as it may be controlling, and further delay could yield undesirable consequences -- and to conditionally restore ballot access to Messrs. Nader and Camejo, based upon the relevant presumption of validity attaching to the nomination papers, as well as the public policy favoring ballot access.

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[29] In this regard, I also believe that the candidate's motivation in conjunction with the material omission, if any, is a question of fact to be assessed, in the first instance, by the Commonwealth Court, as fact finder. While the Chief Justice adverts to the lack of any record evidence of bad faith, there was no hearing on the issue, and hence, no opportunity for the objectors to prove their averment that Mr. Carmejo engaged in false swearing when he executed his affidavit. See RR. 57a.

IN THE COMMONWEALTH
COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell,	:	
Petitioners	:	No. 568 M.D. 2004

OPINION NOT REPORTED

PER CURIAM MEMORANDUM OPINION IN SUPPORT OF THIS COURT'S ORDER OF SEPTEMBER 27, 2004

FILED: September 29, 2004

On August 9, 2004, objections to the nomination papers of Ralph Nader and Peter Miguel Camejo as candidates of an independent political body for President and Vice-President of the United States (Candidates) were filed in this Court, thus initiating what has thus far resulted in long

and tortured proceedings. Recognizing that hearing challenges to 52,398 signatures would tax this Court's resources, and considering the short time period available to hear and decide those challenges, this Court, on August 19, 2004, directed the Candidates to file an omnibus set of pre-trial evidentiary objections for argument on August 27, 2004.

Following the August 27, 2004 argument, this Court filed an opinion, dated August 30, 2004, which set aside the Candidates' nomination papers. The opinion, however, also addressed all of the pre-trial evidentiary objections then presented by the Candidates. An appeal was taken to the Pennsylvania Supreme Court, which, in a *per curiam* order dated September 20, 2004, reversed this Court's order setting aside the nomination papers and remanded for expedited hearings on the signature challenges. These hearings began on September 27, 2004, exactly one month after the argument on, *inter alia*, Candidates' omnibus pre-trial evidentiary objections. On the same day, Candidates filed a "motion to amend order of September 20, 2004," raising a new objection to the manner in which this Court reviews the signature challenges. This new challenge, coming more than a month after the Court required the filing of omnibus pre-trial evidentiary objections and on the same day that the hearings were set to commence, is untimely and, in our opinion, has been waived by the Candidates. Nonetheless, because Candidates have raised what appears to be a novel issue that may have broad implications for future cases, we shall address the objection.

Simply stated, the issue now raised by Candidates is whether signers of nomination papers, as opposed to nomination petitions filed by partisan candidates for the primary election, must be registered voters at all. Section 908 of the Election Code,[30] which applies to partisan nomination

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[30] Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §2868.

petitions, requires that each signer must be a "registered and enrolled member of the party designated in such petition." Section 951 of the Code, 25 P.S. §2911, which governs nomination papers of political body nominees, requires only that the signers be "qualified electors of the State." Candidates note that the federal court for the Eastern District of Pennsylvania in *Morrill v. Weaver*, 224 F. Supp. 2d 882 (E.D. Pa. 2002), in construing a similar requirement in Section 951 (d) of the Election Code, 25 P.S. §2911(d), held that a construction limiting the term "qualified electors" to only registered voters would be unconstitutional. Accordingly, Candidates suggest that any person who possesses the constitutional qualifications for voting, whether actually registered or not, should be qualified to sign a nomination paper for a candidate.[31]

Candidates' argument, at first blush, appears to have merit. However, a cogent analysis proves it to be specious. The Election Code itself defines "qualified elector" as "any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitutional of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, shall obtain such qualifications before the next ensuing election." Section 102(t) of the Election Code, 25 P.S. §2602(t). The relevant constitutional language is found in Article VII, Section 1 of the Pennsylvania Constitution, defining a "qualified elector" as any citizen who meets minimum age and residency requirements, "subject, however, to such laws requiring and

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[31] Pennsylvania Courts are not bound by decisions of lower federal courts, even on questions of federal constitutional law. *Finnegan v. Pa. Bd. of Probation & Parole*, 838 A.2d 684 (Pa. 2003)((*citing Commonwealth 'v. Chester*, 557 Pa. 358. 733 A.2d 1242, 1256 (1999)(although state supreme court may look to decisions of intermediate federal courts in interpreting federal case law, those decisions are not binding on state supreme court)).

regulating the registration of electors as the General Assembly may enact." (Emphasis added.)

Shortly after the enactment of the present Election Code, our Supreme Court was presented with this question in *Aukamp v. Diehm*, 336 Pa. 118, 8 A.2d 400 (1939). While that case involved the question of whether signers of a referendum petition under the Liquor Control Act of 1937 must be registered voters, the Court analyzed the matter under the voter qualification provision of the Pennsylvania Constitution. The Supreme Court also noted the Election Code's definition of "qualified elector," and concluded that the legislature used the word "elector" in the sense of one qualified to vote at the election and therefore one who, at the time of signing the petition, was a registered voter. The Court dismissed the suggestion that non-registered signers of a petition might register before the election, stating that "the legislature, by using the word `electors,' intended petitioners to be persons at that time registered; unless that were held to have been the legislative intention the commissioners would have no way of ascertaining whether the requisite number of signers were electors . . . ." 336 Pa. at 121, 8 A.2d at 401.

We find *Aukamp* to be dispositive on this issue, and are bound by its holding. The federal court in *Morrill*, however, was also aware of *Aukamp* and found its application "limited, after numerous amendments in recent decades to the Pennsylvania Election Code- and recent United States Supreme Court decisions impacting Pennsylvania statutes." *Morrill*, 224 F.Supp.2d at 895, fn.16.

As noted earlier, we are not bound by decisions of inferior federal courts. However, we need not determine whether to follow *Morrill*, as we find it readily distinguishable. *Morrill* dealt solely with circulators. of petitions, while the question here involves the actual signers. We are well aware of the line of recent cases striking down restrictive requirements imposed on circulators, following

the U.S. Supreme Court's decision in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999). Central to these holdings is the notion that petition circulation has been held to be "core political speech," because it involves "interactive communication concerning political change." *Buckley*, 525 U.S. at 186. Such is not the case when a person seeks to exercise his or her right to support a candidate by signing a nomination petition or paper, as can be readily shown by numerous decisions upholding state laws requiring signatures by registered voters. *See Nader v. Keith*, F.3d (7t" Cir., No. 04-3183, filed September 22, 2004), and cases cited therein.

Accordingly, having concluded that Candidates have waived their objection and having further concluded that the nomination papers may be signed only by registered voters, for these reasons we denied Candidates' motion by order of September 27, 2004.

Further, the Court wishes to note that, at present, eight Commissioned Judges of the Commonwealth Court and four Senior Judges are involved in this exhaustive line-by-line signature review. Most of these Judges are putting in 14-hour work days in order to comply with the Supreme Court's "forthwith" Order of September 20, 2004.

If the Supreme Court is going to eliminate the requirement that the signers of nominating papers in this and similar circumstances must be registered electors at the time of the signing of the papers, Commonwealth Court prays that it will do so promptly, since such a ruling would render moot all of the efforts and thousands of hours of judicial time that are now being expended.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	No. 568 M.D. 2004 Argued: August 27, 2004
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell,	:	
Petitioners	:	

ORDER

AND NOW, this 27th day of September, 2004, upon consideration of the within respondents' Motion to Amend this Court's Order of September 20, 2004, in the above-captioned matter, the foregoing Motion is hereby DENIED.

Opinion to follow.

/s/
JAMES GARDNER COLINS, President Judge

{J-176-2004}
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	: No. 154 MAP 2004 : : Appeal from the Order : of the Commonwealth : Court dated August 30, : 2004, at No. 568 M.D. : 2004.	
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell	: : : : : : : : :	
Appeal of: Ralph Nader and Peter Miguel Camejo, and Their Independent Electors,	: :	Submitted: September 10, 2004

ORDER

PER CURIAM

AND NOW, this 20th day of September, 2004, the Order of the Commonwealth Court dated August 30, 2004 is **REVERSED** and **VACATED**, and the matter is **REMANDED** on an expedited basis for hearings on the Petition to Set Aside the Nomination Papers of Ralph Nader and Peter Miguel Camejo.

The Petition for Review of the Denial of a Request for a Stay and Supersedeas is dismissed as moot.

Opinion to follow.

IN THE COMMONWEALTH
COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti,Terry: Trinclisti, Bernie Cohen-Scott, Donald G.: Brown and Julia A. O'Connell,	:	
Petitioners	:	No. 568 M.D. 2004

PER CURIAM **ORDER**

Now September 16, 2004, as follows, it is hereby ordered that hearings on objections to nomination papers are scheduled as follows:

Nomination papers circulated in Philadelphia County

September 27, 2004, 9:30 a.m.
Philadelphia County Board of Elections, 520 N. Delaware Avenue, Philadelphia (use Spring Garden entrance), Rooms A, B, and C

Nomination papers circulated in Montgomery County

September 27, 2004, 9:30 am.
Widener Building, 1339 Chestnut St.,
One South Penn Square, Philadelphia,
Courtroom No. 1

Nomination papers circulated in Bucks County

September 27, 2004, 9:30 a.m.
Bucks County Courthouse, Courtroom TBA
55 East Court Street
Doylestown

Nomination papers circulated in Allegheny County

September 27, 2004, 9:30 a.m.
Allegheny County Courthouse, 414 Grant St.,
City-County Building, Pittsburgh, Rooms
709, 710

Nomination papers circulated in Clarion, Crawford, Elk, Erie Lawrence, Mercer, Venango and Warren Counties

September 27, 2004, 9:30 a.m.
Erie County Courthouse, 140 W. 6th St., Erie,
Room B-208

Nomination papers circulated in Armstrong, Beaver, Blair Butler; Cambria, Centre, Clearfield, Fayette, Fulton, Indiana, Jefferson, Somerset, Washington and Westmoreland Counties

September 27, 2004, 9:30 a.m.
Westmoreland County Courthouse, 2 North
Main St., Greensburg, Room 5, 2nd floor

Nomination papers circulated in Berks, Bradford, Columbia Cumberland, Dauphin and Lackawanna Counties

September 27, 2004, 9:30 a.m.
Commonwealth Court, Fifth Floor, Irvis Office Building, Harrisburg, Courtroom 2

Nomination papers circulated in Adams, Lancaster, Lebanon Lehigh, Luzerne, Lycoming, Monroe and Schuylkill Counties

September 28, 2004, 9:30 a.m.
Commonwealth Court, Fifth Floor, Irvis Office Building, Harrisburg, Courtroom 2

Nomination papers circulated in Montour, Northampton, Perry, Susquehanna, Wyoming and York Counties

September 29, 2004, 9:30 a.m.
Commonwealth Court, Fifth Floor, Irvis Office Building, Harrisburg, Courtroom 2

Nomination papers circulated in Delaware and Chester Counties

September 30, 2004, 9:30 a.m.
Commonwealth Court, Fifth Floor, Iris Office Building, Harrisburg, Courtroom 2

Further, with respect to all counties, and as modified below with respect to Philadelphia and Allegheny Counties, counsel shall forthwith meet with the election officials maintaining the voter registration records for each county from which objections are asserted to nomination papers. Counsel and election officials shall compare those nomination papers with the official records for the purpose of reporting to the court, by stipulation or evidence, as set forth below. Counsel are expected to make themselves

available on weekdays and weekends beginning at 8:30 a.m. and lasting into the evening until 10:00 P.M. for this review, and to cooperate in facilitating the timely and accurate resolution of the issues before the court. The absence; however, of some counsel shall not prevent the review of official records from going forward, unless all counsel agree to a temporary hiatus.

On the date set for hearing, counsel shall report to the court the following information with respect to those nomination papers being reviewed in that hearing location, separately stating the totals in each of the categories listed below, and providing the specific line and page numbers counted in each total:

1. The total number of signatures (from the applicable county or counties) appearing on nomination papers for the candidates n of including any signatures which were struck through prior to filing of the nomination petition.

2. The number of challenged signature lines examined which upon review, are defective because they:

a. are signed by a person for whom no registration record exists in the county under review;

b. are entirely missing a signature, printed name, street address including borough, township or city or date of signing;[32]

c. are signed by a person whose voter registration records indicate an address other than that stated on the nomination petition;[33]

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[32] The failure of the signator to fill in the information required under the Election Code i.e., address, date of signing, etc., invalidates the signature. *In re Nomination of Silcox*, 674, 674 A.2d 224 (1996).

d. are signed by a person who is a registered voter at the address given but not on or before the date he or she signed the nomination petition.[34]

e. appear on a page entirely lacking an affidavit or where the affidavit fails to attest that the signators signed with knowledge of the petition's contents, that their addresses are correctly stated, that they live in the county named, that they signed on the date opposite the signature and that to the affiant's knowledge and belief, the signers are qualified electors of the state;[35]

f. appear on a page where the affidavit lacks the affiant's signature or place of residence (including street address and borough, township or city);

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[33] Our Supreme Court has made clear that the address stated on the petition must correspond to that on their voter registration card. *In re Nomination of Flaherty*, 564 Pa. 671, 770 A.2d 327 (2001). When an elector changes his address and fails to timely notify authorities of the change, that person is no longer a qualified elector. *Id.* To the extent that candidates can show that the elector moved before singing the petition and his change of address notice has not yet been recorded, or some similar extraordinary circumstances, they can present such evidence during their case. Absent such evidence, however, an inconsistency between the registration address and that listed on the petition mandates striking of the signature.

[34] Both this court and the Supreme Court of Pennsylvania have repeatedly held that a signature on a nominating must be stricken if the signator is not a registered voter at the time he signed the petition. *In re Nomination Petition of Cooper*, 516 A.2d 1285 (Pa. Cmwlth.) *aff'd*, 505 Pa. 529, 481 A.2d 1314 (1984).

[35] The absence of the required affidavit renders that page of the nomination petition fatally defective. *See In re Nomination of Kloiber*, 362 A.2d 484 (Pa. Cmwlth. 1976).

g. appear on a page where the affiant lists an address within the county(s) under review and is a person for whom no registration record exists in the county;

h. appear on a page where the affiant lists an address within the county(s) under review and is a person for whom voter registration records indicate an address other than that stated in the affidavit;[36]

i. appear on a page where the affiant is a person who is a registered voter at the address given but not on or before the date he or she stated on the affidavit; or

j. are duplicates of another signature by the same elector.

With respect to a., c., g. and h. above, not to be included are the names or addresses which may be a variable form of the name or address on the registration (*i.e.*, nicknames, initials missing, transposed house numbers, etc.).

Further, the totals in each of the above categories shall be reported in the order listed above and to the extent that any signature has been found defective in one category, it shall not be counted in the totals reported as -defective in a subsequent category.

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[36]It is well established that, pursuant to Section 909 of the Election Code, as amended, 25 P.S. § 2869, the circulator/affiant of a nomination petition for candidacy on a primary ballot must be a qualified elector, that is to say registered to vote in the name and at the address stated in the affidavit. *See In re Nomination of Wesley*, 536 Pa. 609, 640 A.2d 1247 (1994). Section 951 of the Code, as amended, 25 P.S. § 2911, imposes the same requirements as Section 909, *i.e*, that the affiant state that he is a registered voter and give his address. For this reason, the holding in Wesley applies in the present case.

Because of the objective nature of defects of this type, it is expected that counsel shall stipulate to these numbers. In the absence of a stipulation, however, the responsible election official who has Participated in the above described review process shall be prepared to testify to such numbers based upon his personal inspection of the voter registration records, and shall produce such records in court so that all counsel may utilize them for purposes of cross-examination. Both sides shall present all evidence and arguments with respect to the above-described categories of challenge before moving on to other challenges.

As to Philadelphia County, Mr. Robert Lee, Voter Registration Administrator, or his representatives ["Philadelphia registration officials"], shall examine the voter registration records and be prepared thereafter to testify to the total number of signature lines that fall within each of the categories listed above, except duplicate signatures. This examination shall proceed forthwith, and shall continue into the evenings and weekends, as necessary. Counsel are encouraged to participate in this examination of voter registration records and prepare stipulations as appropriate, but their absence, even by agreement, shall not interrupt the review by the Philadelphia registration officials. At the hearing, counsel will be afforded opportunity to cross-examine as to those signature lines for which there are no stipulations.

The Commonwealth Court Judges presiding over the Allegheny County review shall make any further administrative rules that they deem necessary consistent with the Supreme Court's mandate to proceed forthwith. These rules shall apply to all other venues in which the Court has scheduled hearings.

Thereafter, evidence may be presented by both sides regarding all remaining challenges which do not fit into the

categories listed above. Counsel are directed to stipulate to the greatest extent possible with respect to these challenges.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	No. 568 M.D. 2004
	:	Argued: August 27, 2004
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell,	:	
Petitioners	:	

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge HONORABLE DORIS A. SMITH-RIBNER, Judge HONORABLE CHARLES P. MIRARCHI, JR., Senior Judge

OPINION BY JUDGE SMITH-RIBNER

FILED: August 30, 2004

Linda S. Serody et al. (Objectors) have filed objections to the Nomination Papers of Ralph Nader and Peter Miguel Camejo (Candidates) as Candidates of an Independent Political Body for President and Vice President

of the United States in the General Election scheduled for November 2, 2004. By order dated August 19, 2004, the Court directed Candidates to file an omnibus set of pre-trial evidentiary hearing objections and brief in support thereof. [37]

Argument on Candidates' objections and Objectors' reply thereto was held before the Court on August 27, 2004. Candidates' objections may be grouped into three categories: (1) alleged disqualification due to party affiliation or membership and related affidavits; (2) method of consideration of electors' signatures and addresses; and (3) validity and/or method of challenging or rehabilitating signatures or pages in the nominating papers that were rejected by the Secretary of the Commonwealth.

I

Candidates seek to dismiss Objectors' challenge that Candidates are disqualified from appearing on the Pennsylvania ballot as candidates of an independent political body for President and Vice President because they have been nominated by the National Convention of the Reform Party of the United States for the same offices.[38] Objectors

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[37] The pre-hearing challenges relate to the objections filed to the nomination papers of Candidates. The Court notes that the Pennsylvania Election Code, Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §§2600 - 3591, distinguishes between candidates in party primary elections who must file "nomination petitions" and candidates of political bodies (independent of minor party candidates) who must file "nomination papers." For this election, the latter candidates must file nomination papers containing a number of signatures equal to 2% of the last highest vote obtained in a statewide election, which in this case equates to 25,697 signatures.

[38] The Court's pre-trial order envisioned the filing of pre-trial evidentiary objections. The "party nomination or membership" issue is clearly a legal rather than an evidentiary issue. Nonetheless, because the issue could potentially decide the entire matter, thus obviating the need for perhaps unprecedented hearings, the Court shall determine this matter at the outset.

note that in Pennsylvania, candidates seeking to appear on the ballot as independents may not have sought nomination by a political party in the same election cycle. *See* Section 951(e) of the Pennsylvania Election Code (Election Code), Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §2911(e).[39] Objectors further argue that Candidate Camejo must be disqualified because he executed a false affidavit claiming that he was not an enrolled member of a political party although he was a registered member of the Green Party in Sacramento County, California.

Section 951 (e) of the Election Code provides as follows:

> **There shall be appended to each nomination paper offered for filing an affidavit of each candidate nominated therein, stating** -- (1) the election district in which he resides; (2) the name of the office for which he consents to be a candidate; (3) that he is eligible for such office; (4) that he will not knowingly violate any provision of this act, or of any law regulating and limiting election expenses, and prohibiting corrupt practices in connection therewith; (5) that his

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[39] The applicable statutory provisions are sometimes referred to as the "sore loser" provisions, as they generally are intended to prevent losers of party primaries from a "second chance" run as independents. *In re Zulick*, 832 A.2d 572 (Pa. Cmwlth.), affd, 575 Pa. 140, 834 A.2d 1126 (2003); *In re Substitute Nomination Certification of Moran*, 739 A.2d 1168 (Pa. Cmwlth. 1999). See also Section 976(e) of the Election Code, 25 P.S. §2936, which prohibits the filing of nomination papers if the candidate has filed a nomination petition for any public office for the ensuing primary or has been nominated for such office by nomination papers previously filed.

> name has not been presented as a candidate by nomination petitions for any public office to be voted for at the ensuing primary election, nor has he been nominated by any other nomination papers filed for any such office; (6) that in the case where he is a candidate for election at a general or municipal election, he was not a registered and enrolled member of a party thirty (30) days before the primary held prior to the general or municipal election in that same year....

Candidates dispute the contention that, because they accepted the nomination of the National Convention of the Reform Party of the United States, they have forfeited their right to seek election as independent candidates in Pennsylvania. They argue that a careful reading of Section 951(e) "seems to suggest" that its language refers solely to candidates who run in Pennsylvania primaries and in Pennsylvania elections and that the statute does not refer to candidates' activities in another state such as Michigan. In addition, Candidates assert their First Amendment right of association and Fourteenth Amendment right to equal protection under the law to run in Pennsylvania as independent candidates regardless of their nomination as candidates of the Reform Party.

Arguing the holdings in *Patriot Party of Allegheny County v. Allegheny County Department of Elections (Patriot Party I)*, 95 F.3d 253 (3d Cir. 1996), and *Reform Party of Allegheny County v. Allegheny County Department of Elections (Patriot Party II)*, 174 F.3d 305 (3d Cir. 1999), Candidates urge this Court to adopt the analysis in those cases and to conclude that any statutory prohibition against Candidates' running in Pennsylvania because of the Reform Party nomination would violate their equal protection rights

inasmuch as no strong state interest would be served by denying Candidates ballot status in Pennsylvania. In *Patriot Party II* an en banc panel of the Third Circuit Court of Appeals reaffirmed in part the panel decision in *Patriot Party I* that Section 951(e)(5) and Section 976(e) of the Election Code, 25 P.S. §2936(e), constituted invidious discrimination in violation of minor political parties' equal protection rights under the Fourteenth Amendment. The Election Code provisions allowed major political parties to engage in cross filing of candidates in certain local elections for five offices but denied that same opportunity to minor political parties.

The court reiterated the principle that by treating minor and major political parties differently, the Election Code provisions burdened not only the minor parties but the voters who supported the parties as well, citing *Williams v. Rhodes*, 393 U.S. 23 (1968). Recounting the state's proffered justifications for the cross-filing ban noted in *Patriot Party II*, Candidates contend that they do not meet the "sore losers" test because they did not run in the Pennsylvania primary; they do not seek to monopolize the ballot or cause voter confusion; their candidacy does not cause a "bleeding" of independent voters; and their candidacy will not discourage others from running as independents. Nonetheless, the present matter does not involve a ban on cross filing for the offices of President and Vice President, which in any event is not allowed under the Election Code, and consequently the holding in Patriot Party II is inapposite and irrelevant to the issue before this Court. Therefore, neither Patriot Party I nor Patriot Party II supports Candidates' arguments.

In contrast, in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), the United States Supreme Court held that the election laws of the State of Minnesota, which prohibited an individual from appearing on the ballot as a candidate of more than one party, did not violate that individual's First

Amendment or Fourteenth Amendment rights. The New Party, a minor political party, selected a candidate to run for an office who already had accepted nomination by another political party for the same office. The New Party sued the state's election officials claiming that the "anti-fusion" law violated its associational rights under the First and Fourteenth Amendments. *Citing Storer v. Brown*, 415 U.S. 724 (1974), among other cases, the Supreme Court recognized in *Timmons* that states may enact reasonable regulations of parties, elections and ballots to reduce election and campaign-related disorder and to prevent chaos. It upheld Minnesota's laws after weighing the character and magnitude of the burdens imposed on associational rights, which were not severe, and concluding that the laws ruled out only those individuals who had already agreed to seek office as a candidate for another party.

In *Storer* the Supreme Court approved of a California election statute that denied ballot positions to independent candidates who voted in the immediately preceding primary election or who had a registered party affiliation at any time during the year before the same primary election. Furthermore, no individual was permitted to file nomination papers for a party nomination and an independent nomination for the same office or for more than one office in the same election. The court recognized that California's one-year "party-disaffiliation" statute was part of that state's policy to maintain the integrity of the ballot, and it further concluded that the statute did not discriminate against independent candidates. In so ruling, the court upheld the state's denial of ballot status to two men who sought election as independent candidates for Congress when they were affiliated with a qualified political party, as registered Democrats, within one year prior to the 1972 primary election.

This Court is persuaded that case authority exists to defeat the argument that Candidates' rights would be unduly burdened if the Court were to hold that Section 951(e) of the Election Code prohibits ballot status in Pennsylvania to the independent candidates for President and Vice President while they simultaneously run for the same offices as candidates in Michigan under the Reform Party nomination. Candidates have cited no authority for the proposition that the prohibition contained in Section 951 (e) applies only to registered voters running for state office in Pennsylvania; nor have they presented compelling statutory construction arguments to convince the Court that the legislature intended one interpretation of Section 951 (e) for Pennsylvania registered voters seeking office in this state and another interpretation for those persons registered in other states who seek ballot status in Pennsylvania. While fully adherent to the overriding and longstanding legislative policy of the Commonwealth to protect the elective franchise, *see In re Driscoll*, __ Pa.___, 847 A.2d 44 (2004), and while remaining respectful of the fundamental and precious right of the voters to chose among candidates, the Court is not free to ignore clear statutory language in the Election Code or case holdings that dictate the result reached in this case.

The Court observes, and wholeheartedly agrees with, the principle that states may not enact laws to totally insulate the Democratic and Republican two-party system from minor party or independent candidate "competition and influence," see *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Nevertheless, the prohibition in Section 951(e) of the Election Code against a candidate running simultaneously as an independent in Pennsylvania and as a candidate nominated by another political party applies on equal terms to any candidate or political party or body seeking ballot status in Pennsylvania. Thus the prohibition does not run afoul of the state's interests in regulating elections in

Pennsylvania. In *Anderson*, which struck down an Ohio election statute's early filing deadline for independent presidential candidates due to the severe burdens placed on voter freedoms of choice and association, the court addressed the right of states to enact comprehensive election codes to govern the registration and qualification of voters, the selection and eligibility of candidates and the voting process as well. The court expressly noted that a state's "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." Id., 460 U.S. at 788.

In *In re Nomination Papers of Carlson*, 430 A.2d 1210 (Pa. Cmwlth. 1981), *aff'd*, 494 Pa. 139, 430 A.2d 1155 (1981), this Court reiterated the principle that "states have a compelling interest in preserving the integrity of the electoral process and in regulating the number of candidates appearing on the ballot." *Id.* at 1212 (*citing American Party of Texas v. White*, 415 U.S. 767 (1974)). Moreover, it noted, the Election Code provisions regulating nomination papers and affidavits were not mere technicalities but in fact were necessary measures to prevent fraud and to preserve the integrity of the election process. In this regard, the Court set aside a congressional candidate's nomination papers containing a false affidavit.

Finally, as to their statutory construction arguments, Candidates maintain that the applicability of Section 951(e) is limited solely to Pennsylvania registered voters who are candidates for office in this state as opposed to candidates from other states who seek national office. Candidates have offered no rational basis for imposing the disaffiliation restrictions on Pennsylvania registered voters who run for office in this state while at the same time relieving candidates from other states who seek ballot status in Pennsylvania of those very same restrictions. The Court agrees with Objectors that no rational public policy

considerations exist for imposing the Section 951(e) restrictions on Pennsylvania registered voters and not imposing them on registered voters from other states.

The law in this Commonwealth is that statutes must be interpreted in a common sense and rational manner and in such a way as to avoid absurd or unreasonable results. *See* Section 1972 of the Statutory Construction Act of 1972, 1 Pa. C.S. §1922; *Commonwealth v. Burnsworth*, 543 Pa. 18, 669 A.2d 883 (1995). Accordingly, the Court concludes that because Candidates have filed nomination papers as candidates of an Independent Political Body for President and Vice President in the November 2004 General Election while simultaneously running as candidates for the same offices in Michigan by nomination of the Reform Party, Candidates' nomination papers were filed in violation of Section 951(e) of the Election Code. Consequently, Candidates' nomination papers must be set aside, and Candidates shall be denied ballot status in Pennsylvania as independent candidates for the office of President and Vice President.[40]

II

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[40] With reference to Candidate Camejo, the Court holds that he is further disqualified from gaining ballot status in Pennsylvania as an independent candidate for Vice President because he executed a candidate's affidavit indicating that he complied with Section 951.1 of the Election Code, added by Section 3 of the Act of July 12, 1980, P.L. 649, 25 P.S. §2911.1, as he was not enrolled in a political party beginning thirty days prior to the primary and up to the date of the following general election. Mr. Camejo was registered as a member of the Green Party from July 29, 2003 until June 22, 2004. *See* Petition to Set Aside, Exhibits 7, 8. *See also Nomination Petition of Cianfrani*, 467 Pa. 491, 359 A.2d 383 (1976) (holding that requirements of sworn affidavits are to insure legitimacy of information crucial to the election process, that a false affidavit must be equated with a failure to execute the affidavit rendering a defect which could not be cured and that as such the nomination petition therefore was void and invalid).

Although the Court has concluded that Candidates must be denied ballot status in Pennsylvania, the Court shall briefly review and resolve the following procedural objections that were raised in this matter. First, Candidates argue that the objections to later registrations should be stricken. Candidates assert that because the registration process may take several days, persons who sign and mail registration cards during the circulation period may not have appeared on the registration list, yet may be properly registered. As support, Candidates cite this Court's decision in *Petition of Joseph J. O'Hara*, 795 A.2d 513 (Pa. Cmwlth. 2002) (single judge opinion by Simpson, J.). In *O'Hara* the Court reviewed the effects of the Pennsylvania Voter Registration Acts[41] and the National Voter Registration Act[42] (commonly referred to as the "Motor-Voter Law") on nomination petitions. Judge Simpson concluded that the postmark on the registration application was the determining factor when a registration is subsequently approved.

Earlier this year the same issue arose and was resolved in a similar fashion. In *Nomination Petition of Roth* (Pa. Cmwlth., No. 121 M.D. 2004, filed March 8, 2004) (single judge opinion by Feudale, S.J.), fourteen signatures were challenged as improperly registered. The evidence showed that the electors had signed voter registration cards on or before the date on which they affixed their signatures to the petition. However, twelve of the fourteen electors delivered their cards personally to the election officials at a later date. Two cards were mailed but received at a later date. As to these signatures, the postmarks were not placed into evidence. The Court in *Roth* found that none of the signatures were proper because a necessary step was lacking:

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[41] Act of June 30, 1995, P.L. 170, formerly 25 P.S. §§961.101 - 961.5109, repealed by Section 5(2) of the Act of January 31, 2002, P.L. 18. Similar provisions are now found in 25 Pa. C.S. §§1101 - 1906.

[42] 42 U.S.C. §§1973gg-1 - 1977gg-10.

delivery to an appropriate registration official. The reasoning in both cases is adopted here, and the Court agrees that an elector who has either delivered a completed application to registration officials or has postmarked that application on or before the date of signing the petition is a "qualified elector" under Section 951 of the Election Code. One whose application was delivered or postmarked after the date on which an elector signed nomination papers is not a "qualified elector," and the signature will be stricken.

Candidates next assert that Pennsylvania case law has established very stringent requirements for review of signatures and addresses, citing to the Pennsylvania Supreme Court's decisions in *In re Nomination of Flaherty*, 564 Pa. 671, 770 A.2d 327 (2001), and in *In re Silcox*, 543 Pa. 647, 674 A.2d 224 (1996), as well as to this Court's decision in *In re Nomination Petition of Delle Donne*, 779 A.2d 1 (Pa. Cmwlth.), *affd*, 565 Pa. 561, 777 A.2d 412 (2001). These decisions require electors to personally write the required demographic information such as address and municipality as well as the date of signing. Printed signatures are stricken when they do not match a cursive signature in the registration records, even though executed by the elector; likewise for ditto marks. Candidates argue that these decisions have been extremely onerous on candidates who must employ counsel versed in election law to defend against challenges to their nomination petitions and/or papers. Recognizing that this Court does not have the authority to disregard precedent set by the Supreme Court, Candidates nonetheless request this Court to apply a "less stringent" standard to their candidacies.

Notwithstanding the fact that Candidates' observations in this regard may be well founded, the Court must refuse their request to establish a "less stringent" standard in reviewing challenges to the nomination papers. The federal cases cited by Candidates are equally unpersuasive. Candidates do not

argue that the number of signatures or the manner in which they are collected and submitted is somehow unduly burdensome. Rather, they seek to establish a lesser standard for judicial review of nomination papers of independent candidates for President and Vice President.[43] Such standard, if applied, would contravene case law and likely implicate significant equal protection issues as well.. Thus the Court shall dismiss Candidates' objections to the standard by which the Court must review challenges to nomination papers.

Finally, as Candidates note, the Secretary of the Commonwealth rejected almost 5,000 signatures on the nomination papers for a variety of reasons[44] Candidates agree that Section 201(d) of the Election Code, 25 P.S. §2621(d), requires the Secretary to "receive and determine, as hereinafter provided, the sufficiency of nomination petitions, certificates and papers of candidates for President of the United States...." Additionally, Section 976 provides that the Secretary must examine any nomination paper presented within the prescribed period and must reject the same if it does not contain a sufficient number of signatures as required by law. In the event that a nomination paper contains the requisite number of facially valid signatures, the Secretary "although not hereby required so to do, may question the genuineness of any signature or signatures appearing thereon, and if he ... shall thereupon find that any such signature or signatures are not genuine, such signature or signatures shall be disregarded in determining whether the

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[43] *Anderson v. Davis*, 419 A.2d 806 (Pa. Cmwlth. 1980) (holding that in judging the validity of election procedures related to independent candidates for President and Vice President, the Court must look to the unique methodology of Pennsylvania's Election Code).

[44] In response to an order of this Court, the Secretary of the Commonwealth, on August 24, 2004, submitted his count of the number of signatures submitted by Candidates and the number of signatures rejected by the Secretary. The Secretary rejected 4,936 signatures.

... nomination paper ... contains a sufficient number of signatures as required bylaw...." *Id.*

While there can be no doubt that the Secretary of the Commonwealth is authorized to reject individual signatures or pages of a petition, Candidates argue that this process results in the denial of their right to notice and an opportunity to be heard on the issue. In Pennsylvania a candidate whose nomination papers are rejected by the Secretary of the Commonwealth (or County Board of Elections) may petition the proper court for a writ of mandamus. *See* Section 976 of the Election Code; *Tartaglione v. Graham*, 573 A.2d 679 (Pa. Cmwlth. 1990). In certain circumstances, the candidate may seek leave to amend otherwise improper or incomplete affidavits, signatures or other required items. If he or she is successful, the Court orders election officials to accept the papers and preserves a period during which objections may be filed. This process may very well be improper when election officials accept nomination papers but strike various pages r signatures. In that case, the candidate is not aggrieved by acceptance of the papers. *See, e.g., Ochman Appeal*, 364 Pa. 525, 73 A.2d 34 (1950).

The inability of a candidate whose papers have been accepted to challenge the rejection of certain signatures or pages is, of course, of no consequence unless objections to those papers are later filed. Although the candidate is not aggrieved by the Secretary's rejection of certain signatures when nomination papers are accepted, the presence or absence of those signatures may well be the deciding factor in a later objection proceeding. The question then becomes: through what procedure may a candidate challenge the rejections?

One possible method would be to bring a mandamus petition against the election officials to reinstate the stricken signatures, although this method may be impractical due to

the time periods involved and hypothetically would require yet another period during which objections could be filed following a successful mandamus action. The better approach, perhaps, is for the objector to include in his or her objections the signatures already alleged to have been stricken by the election officials, which apparently occurred here. *See* Exhibit 3 to Objections to the Nomination Papers. The objector should state the apparent reasons for rejecting the signatures, and the candidate is then placed on notice that the signatures are being challenged and that an opportunity exists for the candidate to defend against the challenges. This procedure remains uncomplicated, it allows the parties an opportunity to challenge or defend the election official's action in striking the signatures and it furthers the statutory goal of deciding objections in a timely fashion. The Court, therefore, dismisses Candidates' objections to action taken by the Secretary of the Commonwealth in striking signatures from the nomination papers before accepting them for filing.

III

In conclusion, for the reasons articulated in this opinion, the Court holds that Ralph Nader and Peter Miquel Camejo are disqualified from being nominated as Candidates of an Independent Political Body for President and Vice President in the 2004 General Election because their nomination papers fail to comply with the requirements of Section 951 (e) of the Election Code. Candidates nomination papers shall be set aside, and they shall be denied ballot status in Pennsylvania. The Court further dismisses Candidates' objections to the standards followed by the Court in reviewing signature challenges to nomination papers and their objections to the process followed by the Secretary of the Commonwealth in rejecting signatures on the nomination papers.

/s/

DORIS A. SMITH-RIBNER, Judge

IN THE COMMONWEALTH
COURT OF PENNSYLVANIA

In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004	:	No. 568 M.D. 2004
	:	Argued: August 27, 2004
Linda S. Serody, Roderick J. Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald G. Brown and Julia A. O'Connell,	:	
Petitioners	:	

ORDER

AND NOW, this 30th day of August 2004, following oral argument on the petition of Candidates Ralph Nader and Peter Miquel Camejo to dismiss challenges to the nomination papers filed in this matter and Objectors' response thereto, the Court hereby orders that the nomination papers of Mr. Nader and Mr. Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004 be and are hereby set aside.

The Chief Clerk of the Commonwealth Court is directed to notify all parties and Counsel of record of the entry of this order and shall certify a copy hereof to the Secretary of the Commonwealth. The Secretary is directed not to print the names of Ralph Nader and Peter Miquel Camejo on the ballot for the 2004 General Election. All parties shall bear their own costs.

/s/
DORIS A. SMITH-RIBNER, Judge